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LEGISLATIVE HISTORY

(16)

Public Law 404--79th Congress

Chapter 324--2d Session

3078

S. 7

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DIGEST OF PUBLIC LAW 404

ADMINISTRATIVE PROCEDURE ACT. Requires, with some exceptions, executive agencies to publish in the Federal Register organization descriptions, names of places of business, policy statements, certain orders, opinions, statements of rule-making procedure, notices of proposed rules, and rules; directs that other informational materials be made available; sets up procedural requirements for rule making and adjudication, including provision for hearings; sets up limitations on administrative powers; prohibits imposition of unauthorized sanctions, and except in cases of willfulness, etc., provides that no withdrawal, suspension, revocation, or annulment of any license shall be lawful unless opportunity for compliance has been given prior to action; permits continuation of licensed activities until renewal application has been acted upon by the concerned agency; restates principles of judicial review of administrative action; and authorizes appointment of examiners by and for agencies, and contains certain provisions relating to their compensation and removal.

INDEX AND SUMMARY OF HISTORY ON S. 7

January 3, 1945 H. R. 184 introduced by Rep. Celler and referred to the House Committee on the Judiciary. (Similar bill).

H. R. 339 introduced by Rep. Smith and referred to the House Committee on the Judiciary. Print of the bill as introduced. (Companion bill).

January 6, 1945 H. R. 1117 introduced by Rep. Gravens and referred to the House Committee on the Judiciary. Print of the bill as introduced. (Companion bill).

S. 7 introduced by Senator McCarran and referred to the Senate Committee on the Judiciary. Print of the bill as introduced.

January 8, 1945 H. R. 1203 introduced by Rep. Sumners and referred to the House Committee on the Judiciary. Print of the bill as introduced. (Companion bill).

H. R. 1206 introduced by Rep. Walter and referred to the House Committee on the Judiciary. Print of the bill as introduced. (Similar bill).

March 13, 1945 H. R. 2602 introduced by Rep. Gwynne and referred to the Committee on the Judiciary. (Similar bill).

June 21, 1945 Hearings: House, H. R. 184, 339, 1117, 1203, 1206, and 2602.

October 19, 1945 Senate Judiciary Committee reported S. 7 with an amendment. Senate Report 752. Print of the bill as reported.

March 8, 1946 S. 7 discussed in the Senate and made unfinished business.

March 12, 1946 S. 7 debated in the Senate and passed as reported.

March 13, 1946 S. 7 referred to the House Judiciary Committee. Print of the bill as referred.

May 3, 1946 House Judiciary Committee reported S. 7 with an amendment. House Report 1980. Print of the bill as reported.

May 13, 1946 House Rules Committee reported House Resolution 615 for the consideration of S. 7. House Report 2008.

May 24, 1946 S. 7 debated in the House and passed as reported.

May 25, 1946

Remarks of Rep. Jennings on S. 7. Attorney General Clark's letter and statement favoring H. R. 1203. Justice Department memorandum on questions and answers regarding S. 7.

May 27, 1946

Senate agreed to House amendment on S. 7.

June 11, 1946

Approved. Public Law 404.

See also Hearings on same subject, 77th Congress. S. 674, 675 and 913. Pts. 1 - 4.

Senate Document 8 - 77th Congress and Senate Document 186 - 76th Congress, in 13 parts. (Filed with 77th Congress Hearings).

79TH CONGRESS
1ST SESSION

H. R. 184

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1945

Mr. CELLER introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To revise the administrative procedure of Federal agencies; to establish the Office of Federal Administrative Procedure; to provide for hearing commissioners; to authorize declaratory ruling by administrative agencies; and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act, divided into titles and sections according to
4 the following table of contents, may be cited as the “Admin-
5 istrative Procedure Act of 1941”:

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- Sec. 104. Right to counsel.

- Sec. 105. Office of Federal Administrative Procedure.
- Sec. 106. Advisory committees.
- Sec. 107. Duties of the Director.

TITLE II—ADMINISTRATIVE RULE MAKING

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 - (2) Publication of policies, interpretations, and rules.
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- Sec. 204. Formal requests for regulations.
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1 TITLE I—GENERAL PROVISIONS AND OFFICE OF 2 FEDERAL ADMINISTRATIVE PROCEDURE

3 SEC. 101. DECLARATION OF GENERAL POLICY.—The
4 exercise of all administrative powers, insofar as they affect
5 private rights, privileges, or immunities, should be effected
6 by established procedures designed to assure the adequate
7 protection of private interests and to effectuate the declared
8 policies of Congress. While procedures should be adapted to
9 the necessities and differences of legislation and of the subject
10 matter involved, they should in any event be made known
11 to all interested persons. Administrative adjudication should
12 be attended by procedures which assure due notice, adequate
13 opportunity to present and meet evidence and argument, and
14 prompt decision.

15 SEC. 102. DEFINITIONS.—As used in this Act—

16 (a) “Agency” means any department, board, commis-
17 sion, authority, corporation, administration, independent es-
18 tablishment, or other subdivision of the executive branch of
19 the Government of the United States which is empowered
20 by law to determine the rights, duties, immunities, or priv-

1 illeges of persons, other than persons in their capacity as
2 employees of the United States, by the making of rules and
3 regulations or by adjudications which are unreviewable ex-
4 cept by the courts. Where the context warrants, "agency"
5 means more particularly the officer or group of officers within
6 an agency as above defined who are not subordinate or
7 responsible to any other officer therein.

8 (b) "Agency tribunal" means the officer or group of
9 officers within an agency whose decisions in adjudication
10 are unreviewable except by the courts.

11 SEC. 103. DELEGATION OF AUTHORITY.—(a) Subject
12 to such supervision, direction, review, or reconsideration as it
13 may prescribe, every agency or agency tribunal is authorized
14 to delegate to its responsible members, officers, employees,
15 committees, or administrative boards power to manage its
16 internal affairs; to dispose informally of requests, complaints,
17 applications, and cases; to issue complaints, show-cause
18 orders, or other moving papers; and to govern matters of
19 preliminary, initial, intermediate, or ancillary procedure.

20 (b) Every agency tribunal having more than a single
21 member may delegate to one or more of its members, subject
22 to review or reconsideration by it, the power to decide cases
23 after hearing or on appeal.

24 (c) Where the ultimate authority in any agency is
25 vested in a single individual, he may delegate any of his

1 powers of final adjudication to one or more agency tribunals
2 with such membership as he may prescribe.

3 SEC. 104. RIGHT TO COUNSEL.—Every person appear-
4 ing or summoned in any administrative proceeding shall be
5 allowed the assistance of counsel.

6 SEC. 105. OFFICE OF FEDERAL ADMINISTRATIVE PRO-
7 CEDURE.—(1) There shall be appointed by the President,
8 by and with the advice of the Senate, an officer to be known
9 as the Director of Federal Administrative Procedure (here-
10 after referred to as the Director), who shall hold office for
11 the term of seven years or until a successor has been
12 appointed, and shall receive an annual salary of \$10,000.

13 (2) There shall be at the seat of government an estab-
14 lishment to be known as the Office of Federal Administrative
15 Procedure composed of the Director, a justice of the United
16 States Court of Appeals for the District of Columbia desig-
17 nated by its chief justice, and the Director of the Adminis-
18 trative Office of the United States Courts, who shall serve
19 without extra compensation.

20 (3) The Director shall have authority to appoint,
21 without regard for the provisions of the civil-service laws, an
22 executive secretary and such attorneys, investigators, and
23 experts as are deemed necessary to perform the functions
24 and duties vested in the Director and Office of Federal Ad-
25 ministrative Procedure, and he shall fix their compensation

1 according to the Classification Act of 1923, as amended.
2 The Director shall appoint such other employees with
3 regard to existing laws applicable to the appointment and
4 compensation of officers and employees of the United States,
5 as he may from time to time find necessary.

6 SEC. 106. ADVISORY COMMITTEES.—(1) The Director
7 shall designate from time to time, as occasion requires, the
8 administrative establishments of the United States which
9 are agencies within the meaning of this Act.

10 (2) Each agency so designated shall from time to time
11 name one of its members or officers to serve as an adviser
12 to the Office of Federal Administrative Procedure and the
13 Director.

14 (3) From the representatives of the agencies so named
15 the Director shall constitute such advisory committee or
16 committees as he may deem helpful, and may add to them
17 additional officers of the Government or members of the
18 public.

19 (4) It shall be the duty of each agency promptly to
20 furnish the Director all information which he may request
21 and to assist him by all possible means. The Director, in the
22 performance of his duties, is authorized to utilize, with the
23 consent of any agency, the personnel or facilities of that
24 agency, and may utilize any other uncompensated personal
25 services or facilities.

1 SEC. 107. DUTIES OF THE DIRECTOR.—The Director
2 shall—

3 (1) Conduct such inquiries into the practices and pro-
4 cedures of the agencies as he may deem necessary, with a
5 view to securing the just and efficient discharge of their
6 respective responsibilities;

7 (2) Make such recommendations and transmit such in-
8 formation to the agencies as may facilitate the uniform adop-
9 tion, wherever feasible and appropriate, of those practices,
10 procedures, and methods of organization which have proved
11 most satisfactory;

12 (3) Receive complaints regarding the procedure of par-
13 ticular agencies, investigate those which appear to be made
14 in good faith, and report thereon to the complainants and to
15 the agency concerned, recommending to the agency any
16 measures which seem to the Director desirable to correct
17 deficiencies;

18 (4) Examine the practices of the several agencies with
19 respect to the giving of publicity to matters pending before
20 them; and recommend rules to simplify and unify to the
21 fullest practicable extent existing provisions which govern
22 utilization of answers and other pleadings; issuance of sub-
23 penas; taking testimony by deposition; content, cost, and
24 availability of transcripts of records; introduction of docu-

1 mentary evidence; standards of proof; requests for findings
2 of fact; exceptions to findings; oral arguments; and rehear-
3 ings;

4 (5) Investigate the admission to practice before the
5 several agencies, in order to determine whether it can be
6 centralized and controlled, with a view to eliminating needless
7 delay and duplication in authorizing members of the bar
8 to appear before agencies; regularizing the circumstances
9 in which others than members of the bar may properly so
10 appear; and developing adequate mechanisms for disciplin-
11 ing or disbarring from further practice before the agencies
12 those whose conduct has shown them to be unworthy;

13 (6) Perform, with other members of the Office, the
14 duties relating to the appointment and removal of hearing
15 commissioners prescribed by this Act;

16 (7) On or before the 1st day of December in each year,
17 transmit to the President and the Congress a report of the
18 work of the Office during the past year, together with any
19 recommendations relating to the practices and procedures of
20 the agencies which the Director may deem appropriate. The
21 report shall also record the names and qualifications of all
22 hearing commissioners appointed since the last report, and
23 the circumstances regarding any proceedings for the removal
24 of hearing commissioners.

TITLE II—ADMINISTRATIVE RULE-MAKING

SEC. 201. RULES AND OTHER INFORMATION REQUIRED TO BE PUBLISHED.—(1) INTERNAL ORGANIZATION AND STRUCTURE.—Every agency shall promptly make available and currently maintain a statement of its internal organization, insofar as it may affect the public in its dealings with the agency, specifying (a) its officers and types of personnel; (b) its subdivisions; and (c) the places of business or operation, duties, functions, and general authority or jurisdiction of each of the foregoing.

(2) PUBLICATION OF POLICIES, INTERPRETATIONS, AND RULES.—All general policies and interpretations of law, where they have been adopted; rules, regulations, and procedures, whether formal or informal; prescribed forms and instructions with respect to reports or other material required to be filed, shall be made available to the public.

SEC. 202. FORMULATION OF RULES.—Every agency shall designate one or more units, committees, boards, officers, or employees to receive suggestions and expedite the making, amendment, or revision of rules, subject to the control and supervision of the agency.

SEC. 203. EFFECTIVE DATE OF RULES.—No regulation hereafter promulgated by an agency shall take effect until forty-five days after the date of its initial publication in the

1 Federal Register unless the regulation or the statute by
2 authority of which it is promulgated provides a longer
3 period; but this limitation upon the time when a regulation
4 takes effect may be reduced or eliminated by certification of
5 the agency, published with the regulation in the Federal
6 Register, that stated circumstances require the effective date
7 to be advanced as specified.

8 SEC. 204. FORMAL REQUESTS FOR REGULATIONS.—

9 Any person may file with an agency a petition requesting
10 the promulgation or amendment of a rule in which the peti-
11 tioner has an interest. Such petition shall be submitted in
12 such form and with such content as may be prescribed by
13 each agency.

14 SEC. 205. REPORTS TO CONGRESS.—Annually, in its
15 report to Congress or otherwise, each agency shall transmit
16 all rules promulgated by it during the preceding twelve
17 months, together with such explanatory material relating to
18 substance or procedure as may be appropriate. The agency
19 shall also include a summary of formal requests with respect
20 to regulations received by it pursuant to section 204 of
21 this title since its last report, and the reasons for its refusal
22 of such of these requests as may have been refused.

23 SEC. 206. TIME OF TAKING EFFECT.—This title shall
24 take effect thirty days after the date of enactment of this
25 Act.

1 TITLE III—ADMINISTRATIVE ADJUDICATION

2 SEC. 301. APPLICATION OF TITLE.—The provisions of
3 sections 302 to 309, inclusive, of this title shall be applicable
4 only to proceedings wherein rights, duties, or other legal
5 relations are required by law to be determined after oppor-
6 tunity for hearing, and, if a hearing be held, only upon the
7 basis of a record made in the course of such hearing. They
8 shall not apply to—

9 (a) proceedings in which a hearing for the purpose
10 of receiving evidence is held before the agency tribunal,
11 or before one or more individual members of an agency
12 tribunal;

13 (b) proceedings which, pursuant to a law of the
14 United States, are conducted before an officer of one of
15 the States;

16 (c) proceedings which precede the issuance of a
17 rule, regulation, or order involving the future governance
18 or control of persons not required by law to be parties
19 to the proceedings;

20 (d) matters concerning the conduct of the Military
21 or Naval Establishments, or the selection or procurement
22 of men or materials for the armed forces of the United
23 States;

24 (e) the selection, appointment, promotion, dis-
25 missal, discipline, or retirement of an employee or officer

1 of the United States, other than a hearing commissioner
2 as provided hereinafter in this title; or

3 (f) matters relating to the patent or trade-mark
4 laws.

5 SEC. 302. APPOINTMENT AND REMOVAL OF HEARING
6 COMMISSIONERS.—(1) HEARING COMMISSIONERS.—In
7 each agency entrusted with the duty of deciding cases, there
8 shall be appointed such number of officers to be known as
9 “hearing commissioners” as the agency may from time to
10 time find necessary for the proper hearing of cases. In any
11 agency in which five or more hearing commissioners have
12 been appointed, one of their number shall be designated by
13 the agency as the “chief hearing commissioner”.

14 (2) SALARIES.—The salary of a hearing commissioner
15 shall be \$7,500 per annum and of a chief hearing commis-
16 sioner, \$8,500 per annum, and shall be paid from appro-
17 priations for salaries and contingent expenses of the agencies
18 to which they may be appointed; but if the Director of
19 Federal Administrative Procedure shall certify, upon appli-
20 cation of an agency, that certain of the cases coming before
21 that agency are of an uncomplicated character, it shall be
22 permissible to fix the salaries of hearing commissioners
23 assigned to such cases at \$5,000 per annum, and such
24 hearing commissioners shall be assigned to no other types
25 of cases.

1 (3) SELECTION AND APPOINTMENT.—A hearing com-
2 missioner may be selected and appointed without regard for
3 the provisions of the civil service or other laws applicable
4 to the employment and compensation of officers and em-
5 ployees of the United States. He shall be nominated by
6 the agency, and shall be appointed by the Office of Federal
7 Administrative Procedure if that Office finds him to be
8 qualified by training, experience, and character to discharge
9 the responsibilities of the position. The Director is author-
10 ized and instructed to make such investigations as may be
11 necessary in order to enable the Office to pass upon the
12 qualifications of nominees.

13 (4) BASIS OF NOMINATIONS.—In the nomination or
14 appointment of hearing commissioners no political test or
15 qualification shall be permitted or given consideration, but
16 all nominations and appointments shall be made on the basis
17 of merit and efficiency alone.

18 (5) TERM OF OFFICE.—Each hearing commissioner
19 shall be appointed for the term of seven years, and shall be
20 removable, within that period, only—

21 (a) upon charges, first submitted to him, by the
22 agency that he has been guilty of malfeasance in office
23 or has been neglectful or inefficient in the performance
24 of duty;

25 (b) upon charges of like effect, first submitted to

1 him, by the Attorney General of the United States,
2 which the Attorney General is authorized to make in
3 his discretion after investigation of any complaint against
4 a hearing commissioner made to him by a person other
5 than the agency; or

6 (c) upon certification by the Director, after appli-
7 cation by the agency, that lack of official business or
8 insufficiency of appropriations renders necessary the
9 termination of the hearing commissioner's appointment.

10 (6) REMOVAL.—(a) If removal of a hearing commis-
11 sioner is sought on stated charges he may, within five days
12 after service of such charges, demand a hearing upon them
13 before the Office of Federal Administrative Procedure; or,
14 if it so directs, before a trial board consisting of the Director
15 and two other individuals designated by the Office. The
16 decision of the Office or the trial board shall be accompanied
17 by findings of fact based upon a record of the hearing and
18 shall not be subject to review in any other forum.

19 Pending determination of the trial a hearing commis-
20 sioner against whom charges have been brought shall be
21 suspended from office. If the office of trial board concludes
22 that cause for removal has been shown the hearing commis-
23 sioner shall be deemed to have been removed from office
24 as of the date when the charges were served upon him. But
25 if it be concluded that no cause for removal has been shown

1 the hearing commissioner shall at once be restored, unless his
2 term of office has expired, and he shall be paid the salary
3 which would have accrued to him but for the suspension.

4 (b) If removal of a hearing commissioner is upon cer-
5 tification as provided in paragraph 5, subsection (c), of
6 this section, a hearing commissioner so removed shall be
7 placed upon an eligible list for reappointment and he shall
8 remain upon the list, if he so desires, for the balance of his
9 term of office; and during that period no new appointments
10 of hearing commissioners shall be made in the agency by
11 which he has been employed except from among persons
12 whose names appear on such list.

13 (7) PROVISIONAL APPOINTMENT.—A hearing commis-
14 sioner may be appointed in the manner provided in para-
15 graphs (3) and (4) of this section for a provisional period
16 not to exceed one year. At the conclusion of the provisional
17 period he shall either be appointed for a full term of seven
18 years or be relieved from further employment as a hearing
19 commissioner in the agency of which he has been a part.
20 During the provisional period he may be removed solely
21 within the discretion of the agency.

22 (8) TEMPORARY APPOINTMENT.—Without reference
23 to the provisions of this section relative to the compensation
24 or tenure of hearing commissioners, the agency may with
25 the approval of the Director designate and assign a tem-

1 porary commissioner for the purpose of hearing a particular
2 case or, alternatively, for a period not in excess of thirty
3 days, when either—

4 (a) the volume of cases arising within the agency
5 is so inconsiderable that appointment of a hearing com-
6 missioner is not justified; or

7 (b) because of vacancy in the office of hearing
8 commissioner, insufficiency of available personnel, or
9 other temporary cause the assignment of one or more
10 temporary hearing commissioners is required to permit
11 the expeditious disposition of cases which await hearing
12 or decision.

13 The assignment of a temporary hearing commissioner may
14 be extended and renewed from time to time for additional
15 periods upon certification, as provided in section 305 of this
16 Act, that the need for such assignment has not terminated
17 and that the public interest will be served by its renewal.

18 In designating temporary hearing commissioners, an
19 agency shall, so far as feasible, utilize the services of a hear-
20 ing commissioner attached to another agency, if the con-
21 sent of that agency is obtained. The salaries of hearing
22 commissioners temporarily assigned from one agency to
23 another shall, during the assignment, be paid by the agency
24 to which they are assigned.

1 (9) POWERS OF PROVISIONAL AND TEMPORARY HEAR-
2 ING COMMISSIONERS.—Provisional and temporary hearing
3 commissioners shall have the powers and perform the duties
4 of hearing commissioners.

5 SEC. 303. HEARING OF CASES.—(1) HEARING BE-
6 FORE HEARING COMMISSIONER.—Subject to the provisions
7 of this section, every case not within the exceptions stated
8 in section 301 of this Act shall be heard before one or more
9 hearing commissioners.

10 (2) WHEN NO HEARING REQUIRED.—No case in which
11 the facts are agreed need be presented for hearing before or
12 consideration by a hearing commissioner if the agency
13 tribunal otherwise directs.

14 (3) DEFAULTS.—Notwithstanding the provisions of
15 other Acts, no agency shall be required to hold hearings when
16 the parties in interest have failed to answer, if so required,
17 a complaint or other process of like effect duly served upon
18 them, or to appear when notified.

19 SEC. 304. POWERS AND DUTIES OF HEARING COM-
20 MISSIONER.—(1) POWERS AT HEARING.—A hearing com-
21 missioner shall have power —

22 (a) to administer oaths and affirmations and take
23 affidavits;

24 (b) to issue subpoenas requiring the attendance and

1 testimony of witnesses and the production of books, con-
2 tracts, papers, documents, and other evidence;

3 (c) to examine witnesses and receive evidence;

4 (d) to cause testimony to be taken by deposition;

5 (e) to regulate all proceedings in every hearing
6 before him and, subject to the established rules and
7 regulations of the agency tribunal, to do all acts and
8 take all measures necessary for the efficient conduct of
9 the hearing; and

10 (f) to exclude evidence which is immaterial, irrele-
11 vant, unduly repetitious, or not of the sort upon which
12 responsible persons are accustomed to rely in serious
13 affairs.

14 (2) DISOBEDIENCE OF LAWFUL ORDER.—If any person
15 in proceedings before a hearing commissioner disobeys or
16 resists any lawful order or process, or refuses to appear
17 after having been subpoenaed, or upon appearing refuses to
18 take the oath or affirmation as a witness, or thereafter
19 refuses to be examined according to law, the agency of
20 which the hearing commissioner is an officer shall certify
21 the facts to the district court having jurisdiction, which shall
22 thereupon promptly hear the evidence as to the acts com-
23 plained of, and, if the evidence so warrants, order compliance
24 or punish such person in the same manner and to the same
25 extent as for contempt of the court.

1 (3) PREHEARING CONFERENCES.—In cases referred to
2 him for that purpose, a hearing commissioner shall have
3 power to initiate, conduct, or participate in prehearing pro-
4 ceedings looking toward informal settlement or other dis-
5 position of matters in controversy; and he shall have power
6 to direct the parties or their representatives to appear before
7 him for a conference to consider—

8 (a) the simplification of the issues;

9 (b) the necessity or desirability of amendments to
10 the pleadings;

11 (c) the possibility of obtaining stipulations of fact
12 and of documents which will avoid unnecessary proof;

13 (d) the limitation of the number of expert wit-
14 nesses; and

15 (e) such other matters as may aid in the disposi-
16 tion of the case.

17 (4) HEARING COMMISSIONER'S DECISION.—Except as
18 otherwise provided in this Act, when the evidence has been
19 heard by a hearing commissioner opportunity shall be given
20 to the parties in interest to request findings of fact and con-
21 clusions of law, and to file briefs or argue orally in accord-
22 ance with the procedure prescribed by the rules of the agency.
23 The hearing commissioner shall find the facts, formulate the
24 conclusions of law, and enter a decision in the case. Such
25 findings, conclusions, and decision shall be stated in writing,

1 served upon all parties in interest, reported to the agency
2 tribunal, and become part of the record; but in any case
3 wherein he deems it appropriate to do so, the hearing com-
4 missioner may announce his decision orally on the record,
5 and shall be required to state his findings, conclusions, and
6 decision more fully and in written form only if requested
7 to do so by a party or by the agency tribunal.

8 SEC. 305. POWERS AND DUTIES OF CHIEF HEARING
9 COMMISSIONER.—(1) POWER TO HEAR CASES.—A chief
10 hearing commissioner shall have the powers and duties con-
11 ferred on hearing commissioners by section 304 of this Act.

12 (2) OTHER POWERS AND DUTIES.—It shall be the duty
13 of the chief hearing commissioner of an agency to—

14 (a) assign hearing commissioners to cases;

15 (b) certify to the agency that the accumulation or
16 urgency of cases awaiting hearing or decision is such as
17 to require the designation of one or more temporary
18 hearing commissioners, for the purpose of hearing a
19 named case or such cases within a period of not to exceed
20 thirty days as may be assigned;

21 (c) certify to the agency that the public interest re-
22 quires the extension of the designation of a temporary
23 hearing commissioner for such further period, not to ex-
24 ceed thirty days, as may be stated by him, subject to the

possibility of subsequent additional extension upon his further certification of continuing necessity;

(d) assign another hearing commissioner to a case in which the hearing commissioner originally assigned is unable to complete the hearing;

(e) direct that the findings of fact, conclusions, and decision in any case be prepared and issued by a hearing commissioner other than the one who presided at the hearing if the latter by reason of death, illness, removal from office, termination of appointment, or unforeseen exigency is unable to prepare the same within a reasonable time: *Provided, however,* That the hearing commissioner to whom such assignment is made may order such reargument or retrial as he may deem necessary to a just decision.

(3) AGENCIES WHERE NO CHIEF HEARING COMMISSIONER.—In an agency which has no chief hearing commissioner, the powers and duties assigned to the chief hearing commissioner by paragraph (2) of this section and by section 306 of this Act shall be exercised by the agency tribunal or by an official of the agency designated for that purpose by the agency tribunal.

SEC. 306. DISQUALIFICATION OF A HEARING COMMISSIONER.—Any party may file with the chief hearing

1 commissioner a timely affidavit of disqualification of any
2 hearing commissioner assigned to hear any case, setting
3 forth with particularity the grounds of alleged disqualifica-
4 tion. After such hearing or investigation as the chief hear-
5 ing commissioner may deem proper, he shall promptly
6 either find the affidavit without merit and direct the case
7 to proceed as assigned or else assign another hearing com-
8 missioner to the case. Where such an affidavit is found to
9 be without merit, the affidavit, any record made thereon,
10 and the memorandum decision and order of the chief hearing
11 commissioner shall be made a part of the record. A hearing
12 commissioner shall withdraw from any case in respect of
13 which he deems himself disqualified for any reason.

14 SEC. 307. CASES WHEN NO DECISION BY HEARING
15 COMMISSIONER REQUIRED.—(1) CERTIFICATE OF EX-
16 ISTENCE OF NOVEL OR COMPLEX QUESTIONS.—Upon the
17 conclusion of the hearing in any case the hearing commis-
18 sioner may certify to the agency tribunal any questions or
19 propositions of law concerning which instructions are de-
20 sired for the proper decision of the case. Thereupon the
21 agency tribunal may either give binding instructions on the
22 questions and propositions certified or may require that the
23 entire record in the case be transmitted to it for considera-
24 tion and decision.

25 (2) TRANSFER OF CASE ON PETITION.—Upon the con-

1 clusion of the hearing in any case the agency tribunal, on
2 petition of any private party therein and for good cause
3 shown, may direct that the entire record in the case be forth-
4 with transmitted to it for consideration and decision.

5 (3) OPPORTUNITY TO PRESENT ARGUMENT.—In any
6 case brought before an agency tribunal pursuant to this sec-
7 tion, the parties shall be afforded opportunity to request
8 findings of fact and conclusions of law, and to file briefs
9 or argue orally before the agency tribunal.

10 SEC. 308. EFFECT OF DECISION OF HEARING COMMIS-
11 SIONER.—(1) FINALITY WHEN NO APPEAL TAKEN OR RE-
12 VIEW ORDERED.—In the absence of timely appeal to the
13 agency tribunal, a decision of a hearing commissioner shall
14 without further proceedings become the final decision of the
15 agency tribunal, and as such enforceable or reviewable to the
16 same extent and in the same manner as though it had been
17 duly entered by the agency tribunal as its decision, judg-
18 ment, order, award, or other ultimate determination in the
19 case; except that the agency head may on its own motion
20 direct that a decision of a hearing commissioner be reviewed
21 by it after notice to the parties and within such period of
22 time and in accordance with such rules as it may prescribe.

23 (2) REOPENING OF HEARING COMMISSIONER'S DECI-
24 SION.—To the same extent and in the same manner as may
25 be permissible in respect of its own final decision, the agency

1 tribunal may reopen and alter, modify, or set aside in whole
2 or in part any decision of a hearing commissioner which has
3 been unappealed and which has become final by operation
4 of time.

5 SEC. 309. REVIEW OF HEARING COMMISSIONER'S DE-
6 CISION BY AGENCY TRIBUNAL.—(1) ASSIGNMENT OF
7 ERRORS ON APPEAL.—When an appeal is taken to the agency
8 tribunal from the decision of a hearing commissioner, the
9 appellant shall set forth with particularity each error asserted,
10 and only such questions as are specified by the appellant's
11 petition for review and such portions of the record as are
12 specified in the supporting brief need be considered by the
13 agency. Where the appellant asserts that the hearing com-
14 missioner's findings of fact are against the weight of the
15 evidence, the agency may limit its consideration of this
16 ground of appeal to the inquiry whether the portions of the
17 record cited disclose that the findings are clearly against
18 the weight of the evidence.

19 (2) POWERS OF AGENCY TRIBUNAL ON APPEAL.—
20 Upon the review of any case the agency tribunal shall afford
21 parties reasonable opportunity for submitting argument. The
22 agency tribunal shall have jurisdiction to remand the case
23 to the hearing commissioner for the purpose of receiving
24 further evidence or making additional findings or to affirm,
25 reverse, modify, or set aside in whole or in part the decision

1 of the hearing commissioner, or itself to make any finding
2 which in its judgment is proper upon the record. But if its
3 findings differ materially from those of the hearing commis-
4 sioner, the agency tribunal shall file with its decision a state-
5 ment explaining the grounds of its determinations, with
6 appropriate references to the record.

7 SEC. 310. RECORD ON APPEAL TO COURTS.—In any
8 proceeding for judicial review, restraint, or enforcement of
9 an administrative order or other determination, it shall not
10 be necessary to print the complete record and exhibits in
11 the case unless the court so orders. The moving party shall
12 print as a supplement or appendix to his brief (which may
13 be separately bound) the pertinent pleadings, orders, deci-
14 sions, opinions, findings, and conclusions of both the agency
15 tribunal and the hearing commissioner, together with relevant
16 docket entries arranged chronologically and such other rele-
17 vant portions of the record as it is desired that the court shall
18 read. Omissions shall be indicated, reference shall be made
19 to the pages of the typewritten transcript, and the names of
20 witnesses shall be indexed. The responding party shall simi-
21 larly print such additional portions of the record as it is
22 desired the court shall read. The courts of the United States
23 may by rule amplify or modify the provisions of this section
24 to further its purpose.

25 SEC. 311. MISTAKE OF REMEDY NOT TO PRECLUDE

1 JUDICIAL REVIEW.—When, in a case pending in any United
2 States court to review an order or determination of an agency,
3 the order or determination is subject to judicial review, but
4 by a procedure or before a court different from that chosen
5 by the person seeking review, the court may, instead of
6 denying relief, take one or more of the following courses of
7 action, on such conditions as it may deem just:

8 (a) proceed, if it has jurisdiction, as if the proper
9 remedy had been sought; or permit or direct such amend-
10 ment, rehearing, or remand to a lower court as it deems
11 appropriate for a proper review of the order; or

12 (b) permit transfer of the case to a court having juris-
13 diction to review the order.

14 SEC. 312. TIME OF TAKING EFFECT.—Sections 310,
15 311, and 313 of this title shall take effect at once. The re-
16 maining sections of this title shall take effect on January 1,
17 1942, or in any particular agency at any prior date upon
18 order thereof, when such agency shall conclude that avail-
19 able personnel and appropriations permit such provisions,
20 or any portion thereof, to become operative.

21 SEC. 313. RULES AND REGULATIONS.—Each agency
22 shall have authority from time to time to make, amend, and
23 rescind such rules and regulations as may be necessary to
24 carry out the provisions of this title.

TITLE IV—DECLARATORY RULINGS

SEC. 401. POWER TO ISSUE RULINGS.—Each agency tribunal shall have power to issue declaratory rulings concerning rights, status, and other legal relations arising under the statute or the several statutes committed to its administration or arising under its regulations, in order to terminate a controversy or remove an uncertainty. The agency tribunal may refuse to render or enter a declaratory ruling where such ruling if made would not terminate the uncertainty or controversy giving rise to the proceeding, or would itself be of uncertain future application, or is deemed to have been sought for the purpose of delay, or would impede the determination of other proceedings then pending, or, in the judgment of the agency tribunal, would be premature or otherwise inexpedient.

SEC. 402. EFFECT.—A declaratory ruling issued by an agency tribunal shall, in the absence of reversal after appropriate judicial proceedings, have the same force and effect and be binding in the same manner as a final order or other determination of that agency tribunal.

SEC. 403. PARTIES.—When a declaratory ruling is sought, all persons shall be made parties who have or claim any legal interest which would be affected by the declara-

1 tion, and no declaration shall prejudice the rights of persons
2 not parties to the proceeding.

3 SEC. 404. JUDICIAL REVIEW.—Judicial review of a de-
4 claratory ruling made by an agency tribunal may be had in
5 the manner and to the same extent as final orders or other
6 determinations of that agency tribunal; except that this title
7 shall not be deemed to modify existing provisions of law
8 applicable to closing agreements concerning internal-revenue-
9 tax matters. Refusal of a request that a declaratory ruling
10 be made shall not be subject to review in any manner.

79TH CONGRESS
1ST SESSION

H. R. 184

A BILL

To revise the administrative procedure of Federal agencies; to establish the Office of Federal Administrative Procedure; to provide for hearing commissioners; to authorize declaratory rulings by administrative agencies; and for other purposes.

By Mr. Celler

JANUARY 3, 1945

Referred to the Committee on the Judiciary

H. R. 339

JANUARY 3, 1945

A BILL

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act, divided into sections, subsections, and sub-
4 paragraphs, may be cited as the “Administrative Procedure
5 Act”.

7 “Agency” means each office, board, commission, inde-
8 pendent establishment, authority, corporation, department,
9 bureau, division, institution, service, administration, or other
10 unit of the Federal Government other than Congress, the
11 courts, or the governments of the possessions, Territories,

1 or the District of Columbia. "Rule" means the written
2 statement of any regulation, standard, policy, interpretation,
3 procedure, requirement, or other writing issued or utilized
4 by any agency, of general applicability and designed to
5 implement, interpret, or state the law or policy administered
6 by, or the organization and procedure of, any agency; and
7 "rule making" means the administrative procedure for the
8 formulation of a rule. "Adjudication" means the adminis-
9 trative procedure of any agency, and "order" means its
10 disposition or judgment (whether or not affirmative, nega-
11 tive, or declaratory in form), in a particular instance other
12 than rule making and without distinction between licensing
13 and other forms of administrative action or authority.

14 PUBLIC INFORMATION

15 SEC. 2. Except to the extent that there is directly
16 involved any military, naval, or diplomatic function of the
17 United States requiring secrecy in the public interest—

18 (a) RULES.—Every agency shall separately state and
19 currently publish rules containing (1) descriptions of its
20 complete internal and field organization, together with the
21 general course and method by which each type of matter
22 directly affecting private parties is channeled and deter-
23 mined; (2) substantive regulations authorized by law and
24 adopted by the agency, as well as any statements of general
25 policy or interpretations framed by the agency and of general

1 public application; and (3) the nature and requirements of
2 all formal or informal procedures available to private parties,
3 including instructions and simplified forms respecting the
4 scope and contents of all papers, reports, or examinations.

5 All such rules shall be filed with the Division of the Federal
6 Register and currently published in the Federal Register.

7 (b) RULINGS AND ORDERS.—Every agency shall pre-
8 serve and publish or make available to public inspection all
9 general rulings on questions of law and all opinions rendered
10 or orders issued in the course of adjudication, except to the
11 extent (1) required by rule for good cause and expressly
12 authorized by law to be held confidential or (2) relating
13 to the internal management of the agency and not directly
14 affecting the rights of, or procedures available to, the public.

15 (c) RELEASES.—Except to the extent that their con-
16 tents are included in the materials issued or made available
17 pursuant to subsections (a) and (b) of this section, every
18 agency shall, either prior to or upon issuance, file with or
19 register and mail to the Division of the Federal Register
20 all other releases intended for general public information or
21 of general application or effect; and the Division shall pre-
22 serve and make all such filings available to public inspection
23 in the same manner as documents published in the Federal
24 Register.

25 (d) ENFORCEMENT.—No person or party shall be

1 prejudiced in any manner for failure to avail himself of
2 agency organization or procedure not published as required
3 by subsection (a) of this section, or for resort to such organi-
4 zation or procedure. The Comptroller General shall disallow
5 the expenditure of public funds for the maintenance or
6 operation of any agency organization or procedure not pub-
7 lished as required by subsection (a).

8 RULE MAKING

9 SEC. 3. Except to the extent that there is directly
10 involved any military, naval, or diplomatic function of the
11 United States, and prior to the issuance of any rule—

12 (a) NOTICE.—Every agency shall publish general notice
13 of proposed rule making, including (1) a statement of the
14 time, place, and nature of public rule-making procedures;
15 (2) reference to the authority under which the rule is
16 proposed; and (3) a description of the subjects and issues
17 involved; but this subsection shall apply only to substantive
18 rules, shall not be mandatory as to interpretative rules,
19 general statements of policy, or rules of agency organization
20 or administrative procedure, and shall not apply in cases in
21 which notice is impracticable because of unavoidable lack
22 of time or other emergency.

23 (b) PROCEDURES.—In all cases in which notice of rule
24 making is required pursuant to subsection (a) of this section,
25 the agency shall afford interested parties an adequate oppor-

1 tunity, reflected in its published rules of procedure, to par-
2 ticipate in the formulation of the proposed rule or rules
3 through (1) submission of written data or views, (2) at-
4 tendance at conferences or consultations, or (3) presentation
5 of facts or argument at informal hearings. Parties unable to
6 be present shall be entitled as of right to submit written
7 data or arguments. All relevant matter presented shall be
8 recorded or summarized and given full consideration by the
9 agency. The reasons and conclusions of the agency shall be
10 published upon the issuance or rejection of the rules or pro-
11 posals involved. Agencies are authorized to adopt proced-
12 ures in addition to those required by this section, including
13 the promulgation of rules sufficiently in advance of their
14 effective date to permit the submission of criticisms or data
15 by interested parties and consideration and revision or sus-
16 pension of the rules by the agency. Nothing in this section
17 shall be held to limit or repeal additional requirements im-
18 posed by law. In place of the foregoing provisions of this
19 subsection, in all cases in which rules are required by statute
20 to be issued only after a hearing the full hearing and deci-
21 sion requirements of sections 6 and 7 shall apply.

22 (c) PETITIONS.—Every agency authorized to issue rules
23 shall accord any interested person the right to petition for
24 the issuance, amendment, rescission, or clarification of any
25 rule, in conformity with adequate published procedures for the

1 submission and prompt consideration and disposition of such
2 requests.

3 ADJUDICATION

4 SEC. 4. In every administrative adjudication in which
5 the rights, duties, obligations, privileges, benefits, or other
6 legal relations of any person are required by statute to be
7 determined only after opportunity for an administrative
8 hearing—

9 (a) NOTICE.—In cases in which the agency is the mov-
10 ing party it shall give due and adequate notice in writing
11 specifying (1) the time, place, and nature of relevant admin-
12 istrative proceedings, (2) the particular legal authority and
13 jurisdiction under which the proposed proceeding is to be
14 had, and (3) the matters of fact and law in issue. In in-
15 stances in which private persons are the moving parties, the
16 agency or other respondents shall give prompt notice of
17 averments, claims, or issues controverted in fact or law. The
18 statement of issues of fact in the language of statutory stand-
19 ards delegating general authority or jurisdiction to the agency
20 involved shall not be compliance with this subsection.

21 (b) PROCEDURE.—Prior to the adjudication of any
22 case the agency shall afford all interested parties the right
23 and benefit of fair procedure for the settlement or adjudica-
24 tion of all relevant issues through (1) an adequate oppor-
25 tunity for the informal submission and full consideration of

1 facts, claims, argument, offers of settlement, or proposals of
2 adjustment; and (2) thereafter, to the extent that the parties
3 are unable to so determine any controversy by consent, full
4 hearing and decision shall be accorded the parties in con-
5 formity with sections 6 and 7. In cases in which determina-
6 tions rest upon physical inspections or tests, opportunity
7 for fair and adequate retest or reinspection by superior officers
8 shall be provided, and thereafter hearing and decision in com-
9 pliance with sections 6 and 7 shall be made available to the
10 parties. In all instances in which statutes authorize and
11 unavoidable limitations of time or other substantial factors
12 are found to require summary action (whether of an emer-
13 gency character or whether preliminary, intermediate, or final,
14 and including the issuance of stop orders or their equivalents),
15 no action so taken shall be lawful unless opportunity for in-
16 formal conference with the agency or with responsible officers
17 thereof shall first have been made available for the prompt
18 adjustment or other fair disposition by consent of all relevant
19 issues of law or fact; and no summary action so taken shall
20 be lawful unless within a reasonable time thereafter the par-
21 ties shall have been afforded an adequate opportunity for
22 hearing and decision in accordance with sections 6 and 7.

23 (c) DECLARATORY ORDERS.—Every agency shall make
24 and issue declaratory orders to terminate a controversy or to
25 remove uncertainty as to the validity or application of any

1 administrative authority, discretion, rule, or order with the
2 same effect and subject to the same judicial review as in
3 the case of other orders of the agency; but such orders
4 shall be issued only upon the petition of a party in interest, in
5 conformity with the notice and procedure required by this
6 section, and to the extent that the agency is authorized by
7 statute to issue orders after administrative hearing.

8 ANCILLARY MATTERS

9 SEC. 5. In connection with any administrative rule mak-
10 ing adjudication, investigation, or other proceeding or
11 authority—

12 (a) APPEARANCE.—Except as otherwise provided by
13 sections 6 and 7, every agency shall accord every person
14 subject to administrative authority and every party or inter-
15 venor (including individuals, partnerships, corporations, asso-
16 ciations, or public or private agencies or organizations of
17 any character) in any administrative proceeding or in con-
18 nection with any administrative authority the right at all
19 reasonable times to appear in person or by counsel before it
20 and its officers or employees, and shall afford such parties so
21 appearing every reasonable opportunity and facility for
22 negotiation, information, adjustment, or formal or informal
23 determination of any issue, request, or controversy. Every
24 person personally appearing or summoned in any adminis-
25 trative proceeding shall be freely accorded the right to be

1 accompanied and advised by counsel. Every person subject
2 to administrative authority or party to any administrative
3 proceeding shall be entitled to a prompt determination of any
4 matter within the jurisdiction of any agency. In fixing the
5 times and places for formal or informal proceedings due
6 regard shall be had for the convenience and necessity of the
7 parties or their representatives.

8 (b) INVESTIGATIONS.—No agency shall issue process,
9 make inspections, require reports, or otherwise exercise in-
10 vestigative powers except (1) as expressly authorized by
11 law, (2) within its jurisdiction, (3) where substantially
12 necessary to its operations, (4) through its regularly author-
13 ized representatives, (5) without disturbing rights of per-
14 sonal privacy, and (6) in such manner as not to interfere
15 with private occupation or enterprise beyond the require-
16 ments of adequate law enforcement. The exercise of such
17 powers or use of any information so acquired for the effec-
18 tuation of purposes, powers, or policies of any other agency
19 or person shall be unlawful except as expressly authorized by
20 statute.

21 (c) SUBPENAS.—Every agency shall issue subpoenas au-
22 thorized by law to private parties upon request. Upon con-
23 test of the validity of any administrative subpoena or upon the
24 attempted enforcement thereof, the court which would have

1 jurisdiction under section 9 hereof shall determine all ques-
2 tions of law raised by the parties, including the authority
3 or jurisdiction of the agency in law or fact, whether or not
4 the compliance would be unreasonable or oppressive, and
5 shall enforce (by the issuance of a judicial order requiring the
6 future production of evidence under penalty of punishment for
7 contempt in case of contumacious failure to do so) or refuse
8 to enforce such subpoena accordingly.

9 (d) DENIALS.—Every agency shall give prompt notice
10 of the denial, in whole or in part, of any application, petition,
11 or other request of any private party. Such notice shall be
12 accompanied by a statement of the grounds for such denial
13 and any further administrative procedures available to such
14 party.

15 (e) RETROACTIVITY.—No rule or order shall be retro-
16 active or effective prior to its publication or service unless
17 such effect is both expressly authorized by law and required
18 for good cause. Such required publication or service shall
19 precede for a reasonable time the effective date of the rule
20 or order.

21 (f) RECORDS.—Upon proper request matters of official
22 record shall be made available to all interested persons except
23 personal data, information required by law to be held con-
24 fidential, or, for good cause found and upon published rule,
25 other specified classes of information.

(g) ATTORNEYS.—No agency shall impose requirements for the admission of attorneys to practice before it or its officers or employees; and attorneys in good standing admitted to practice in the highest court of any State or other place within the jurisdiction of the United States or in any Federal court shall, upon their oral or written representation to that effect, forthwith be admitted to such practice. No agency shall debar or suspend any such attorney from such practice except for violation of law, and such action shall be subject to judicial review de novo upon the law and the facts.

HEARINGS

SEC. 6. No administrative procedure shall satisfy the requirements of a full hearing pursuant to section 3 or 4 unless—

(a) PRESIDING OFFICERS.—(1) The case shall be heard by Commissioners or Deputy Commissioners appointed as provided herein, except where statutes authorize action by representatives of parties or organizations of parties. In the event hearing or deciding officers are no longer in office or are unavailable because of death, illness, or suspension, other such officers may be substituted in the sound discretion of the Commissioners at any stage of proceedings required by this section and section 7.

24 (2) The functions of all hearing officers, as well as of
25 those participating in decisions in conformity with section 7,

1 shall be conducted in an impartial manner, in accord with the
2 requirements of this Act, with due regard for the rights of all
3 parties, and consistent with the orderly and prompt dispatch
4 of proceedings. Such officers, except to the extent required
5 for the disposition of ex parte matters authorized by law,
6 shall not engage in interviews with, or receive evidence or
7 argument from, any party directly or indirectly except upon
8 opportunity for all other parties to be present and in accord
9 with the public procedures authorized by this section and
10 section 7. Copies of all communications with such officers
11 shall be served upon all the parties. Upon the filing of a
12 timely affidavit by any party in interest, of personal bias or
13 disqualification or conduct contrary to law of any such officer
14 at any stage of proceedings, another Commissioner or Deputy
15 Commissioner, after hearing the facts shall make findings.
16 conclusions, and a decision as to such disqualification which
17 shall become a part of the record in the case and be review-
18 able in conformity with section 9 and subsection (c) of
19 section 7.

20 (3) By and with the advice and consent of the Senate,
21 there shall be appointed by the President three Commission-
22 ers, at an annual salary of \$10,000, who shall not be remov-
23 able except for good cause shown, may annually designate one
24 of their number as the presiding Commissioner, and shall hold
25 office for terms of twelve years except that the first three

1 appointments shall be for four, eight, and twelve years, re-
2 spectively, and any unexpired term shall be filled upon
3 appointment for the unexpired portion only.

4 (4) Without regard to the civil-service laws or the
5 Classification Act, the Commissioners shall appoint, in lieu
6 of examiners now employed by agencies for the performance
7 of functions subject to this section and section 7, as many
8 duly qualified and competent Deputy Commissioners as may
9 from time to time be necessary for the hearing or decision
10 of cases, who shall perform no other duties, shall be remov-
11 able only after hearing and for good cause shown, and shall
12 receive a fixed salary not subject to change except that the
13 Commissioners shall survey and adjust such salaries within
14 minimum and maximum limits of \$3,000 and \$9,000, re-
15 spectively, in order to assure adequacy and uniformity in
16 accordance with the nature and importance of the duties
17 performed.

18 (5) The Commissioners shall hear and decide cases or
19 assign Deputy Commissioners to such duties in accordance
20 with such rules as they may adopt and publish in conformity
21 with this Act, make such appointments and provide such
22 clerical assistance and facilities as may be necessary to the
23 functions assigned by this Act, and submit full annual reports
24 to Congress in addition to such special reports or recom-
25 mendations from time to time as they deem advisable. There

1 is authorized to be appropriated such funds as may be neces-
2 sary for the purposes of this section.

3 (c) HEARING POWERS.—Officers presiding at hearings
4 shall have power, in accordance with the published rules of
5 the agency so far as not inconsistent with this Act or with
6 the rules promulgated by the Commissioners provided in
7 subsection (a) of this section, to (1) administer oaths and
8 affirmations; (2) issue such subpoenas as may be authorized
9 by law; (3) rule upon offers of proof and receive relevant
10 oral or documentary evidence; (4) take or cause depositions
11 to be taken whenever the ends of justice would be served
12 thereby; (5) regulate the course of the hearing or the con-
13 duct of the parties; (6) hold informal conferences for the
14 settlement or simplification of the issues by consent of the
15 parties; (7) dispose of procedural motions, requests for
16 adjournment, and similar matters; and (8) make or par-
17 ticipate in decisions in conformity with section 7.

18 (d) EVIDENCE.—No sanction, prohibition, or require-
19 ment shall be imposed or grant, permission, or benefit with-
20 held in whole or in part except upon relevant evidence
21 which on the whole record shall be competent, credible,
22 and substantial. The rules of evidence recognized in judicial
23 proceedings conducted without a jury shall govern the proof,
24 decision, and administrative or judicial review of all ques-
25 tions of fact. The character and conduct of every person

1 or enterprise shall be presumed lawful until the contrary
2 shall have been shown by competent evidence. Whenever
3 the burden of proof is upon private parties to show right
4 or entitlement to privileges, permits, benefits, or statutory
5 exceptions, their competent evidence (other than opinions
6 or conclusions) to that effect shall be presumed true unless
7 discredited or contradicted by other competent evidence.
8 Every party shall have the right of cross-examination and
9 the submission of rebuttal evidence in open hearing, except
10 that any agency may adopt procedures for the disposition
11 of contested matters in whole or in part upon the submission
12 of sworn statements or written evidence subject to oppor-
13 tunity for such cross-examination or rebuttal. The taking
14 of official notice as to facts beyond the proof adduced in
15 conformity with this section shall be unlawful unless of a
16 matter of generally recognized or scientific knowledge of
17 established character and unless the parties shall both be
18 notified (either upon the record or in reports, findings, or
19 decisions) of the specific facts so noticed and accorded an
20 adequate opportunity to show the contrary by evidence.

21 (e) RECORD.—The transcript of testimony adduced and
22 exhibits admitted in conformity with this section, together
23 with all pleadings, exceptions, motions, requests, and papers
24 filed by the parties, other than separately presented briefs

1 or arguments of law, shall constitute the complete and ex-
2 clusive record and be made available to all the parties.

3 DECISIONS

4 SEC. 7. In all cases in which an administrative hearing
5 is required to be conducted in conformity with section 6—

6 (a) INITIAL SUBMISSION.—At the conclusion of the
7 reception of evidence, the officer or officers who presided
8 shall afford the parties adequate opportunity for the sub-
9 mission of briefs, proposed findings and conclusions, and oral
10 argument.

11 (b) DECISION.—After the initial submission pursuant
12 to subsection (a) of this section, the officer or officers who
13 heard the evidence shall find all the relevant facts and enter
14 an appropriate order, award, judgment, or other form of
15 determination. In the absence (within such reasonable
16 time as it may prescribe by general rule) of either an appeal
17 to the agency (upon such specification of errors as it may
18 require by general rule) or review upon the agency's own
19 motion and specification of issues, such decisions shall with-
20 out further proceedings become final determinations and be
21 effective, enforceable, and subject to judicial review pursuant
22 to section 9 to the same extent and in the same manner as
23 though duly heard, decided, and entered by the agency itself.

24 (c) AGENCY REVIEW.—Upon appeal to the agency from
25 the decisions provided in subsection (b) of this section, the

1 highest authority in the agency shall (1) afford the parties
2 due notice of the specific issues to be reviewed, (2) provide
3 an adequate opportunity for the presentation of briefs, pro-
4 posed findings and conclusions, and oral argument by the
5 parties, and (3) affirm, reverse, modify, change, alter,
6 amend, remand, or set aside in whole or in part such de-
7 cision; but the failure of the parties to seek, or of the agency
8 to require, such review shall not affect the right of judicial
9 review pursuant to section 9. Such review by the agency
10 shall be confined to matters of law and administrative dis-
11 cretion.

12 (d) CONSIDERATION OF CASES.—All issues of fact shall
13 be considered and determined exclusively upon the record
14 required to be made in conformity with section 6. In the
15 decision of any case initially or upon review by the agency,
16 all hearing, deciding, or reviewing officers shall personally
17 consider the whole or such parts of the record as are cited
18 by the parties, with no other aid than that of clerks or
19 assistants who perform no other duties; and no such officer,
20 clerk, or assistant shall consult with or receive oral or written
21 comment, advice, data, or recommendations respecting any
22 such case from other officers or employees of the agency or
23 from third parties.

24 (e) FINDINGS AND OPINIONS.—All final decisions and
25 determinations, whether initially or upon review by the ulti-

1 mate authority within the agency, shall be stated in writing
2 and accompanied by a statement of reasons, findings of fact,
3 and conclusions of law upon all relevant issues raised including
4 matters of administrative discretion as well as of law or fact.
5 The findings, conclusions, and stated reasons shall encompass
6 all relevant facts of record and shall themselves be relevant
7 to, and adequate support, the decision and order or award
8 entered.

9 (f) SERVICE.—All administrative findings, conclusions,
10 opinions, or statements of reasons, rules, or orders required
11 to be made in conformity with this section shall be served
12 upon all the parties and intervenors or other participants in
13 the proceeding as well as upon all persons whose attempted
14 intervention or participation has been denied and all inter-
15 ested persons who request in writing to be so notified.

16 PENALTIES AND BENEFITS

17 SEC. 8. In addition to all other limitations or require-
18 ments provided by law—

19 (a) LIMITATIONS.—No agency shall by order, rule, or
20 other act (1) impose or grant any form of sanction or relief
21 not specified by statute and within the jurisdiction expressly
22 delegated to the agency by law; (2) withhold relief in der-
23 ogation of private right or statutory entitlement; or (3)
24 impose sanctions inapplicable to the factual situation pre-
25 sented in any case. Sanction or relief includes, but is not

1 limited to, the imposition, withholding, grant, denial, sus-
2 pension, withdrawal, revocation, or annulment, as the case
3 may be, of any form of privilege, license, permission, remedy,
4 benefit, assistance, prohibition, requirement, limitation,
5 penalty, fine, taking or seizure of private property, or assess-
6 ment of damages, costs, charges, or fees. The exercise, or
7 attempted exercise, of implied powers by any agency to
8 make substantive rules, adjudicate cases, or impose penalties
9 or requirements or withhold benefits is unlawful for any
10 purpose.

11 (b) LICENSES.—In addition to the requirements of
12 subsection (a) of this section, (1) in any case, except
13 financial reorganization, in which an administrative license
14 (including permit, certificate, approval, registration, charter,
15 membership, or other form of permission) is required by
16 law and due request is made therefor such license shall be
17 deemed granted in full to the extent of the authority of the
18 agency unless the agency shall within not more than sixty
19 days of such application have made its decision or set the
20 matter for formal proceedings required to be conducted
21 pursuant to sections 6 and 7 of this Act; (2) except in
22 cases of clearly demonstrated willfulness or those in which
23 public health, morals, or safety require otherwise, no with-
24 drawal, suspension, revocation, or annulment of any such
25 license shall be lawful unless, prior to the institution of

1 administrative proceedings therefor, any facts or conduct
2 of which the agency has notice and which may warrant
3 such action shall have been called to the attention of the
4 licensee in writing and such person shall have been ac-
5 corded a reasonable opportunity to demonstrate or achieve
6 compliance with all lawful requirements; (3) no such license
7 with reference to any business, occupation, or activity of a
8 continuing nature shall expire, in any case in which the
9 holder thereof has made due and timely application for a
10 renewal or a new license, until such application shall have
11 been finally determined by the agency concerned.

12 (c) PUBLICITY.—Except as expressly authorized by
13 law, no agency shall, directly or indirectly, issue publicity
14 reflecting adversely upon any person, product, commodity,
15 security, private activity, or enterprise otherwise than by
16 issuance of the full texts of authorized public documents,
17 impartial summaries of the positions of all parties to any
18 controversy, or the issuance of legal notice of public pro-
19 ceedings within its jurisdiction.

20 JUDICIAL REVIEW

21 SEC. 9. In connection with any Act, rule, order, process,
22 or proceeding of any agency—

23 (a) RIGHT OF REVIEW.—Any party adversely affected
24 shall be entitled to judicial review of any issue of law in
25 accordance with this section; and every reviewing court shall

1 have plenary authority to render such decision and grant
2 such relief as right and justice may demand in conformity
3 with law and this Act.

4 (b) FORM OF ACTION.—In addition to judicial review
5 incident to proceedings for any form of criminal or civil en-
6 forcement of administrative rules, orders, or process, the
7 form of proceeding for judicial review shall be any special
8 statutory review proceeding relevant to the subject matter
9 or, in the absence or inadequacy thereof, any applicable form
10 of legal action including actions for declaratory judgments or
11 writs of injunction or habeas corpus. Any party adversely
12 affected or threatened to be so affected may, through decla-
13 ratory judgment procedure with or without prior resort to the
14 issuing agency, secure a judicial declaration of rights respect-
15 ing the validity or application of any administrative act, rule,
16 or order. Except as otherwise provided in connection with
17 special statutory review proceedings, any action for judicial
18 review may be brought against one or more of the following:
19 (1) The agency in its official title at the time of the filing
20 of the proceeding; (2) the officer who is the head of, or
21 one or more of the officers comprising the highest authority
22 in, the agency; or (3) any one or more officers acting in
23 the manner challenged or enforcing or authorized to enforce
24 the rule or order involved.

25 (c) COURTS AND VENUE.—The review guaranteed by

1 this section shall be had upon application to the courts named
2 in statutes especially providing for judicial review or, in the
3 absence or inadequacy thereof, to the district court of the
4 United States (including the District Court of the District
5 of Columbia) in the State, district, and division where the
6 party seeking court review or any one of them resides or
7 has his principal place of business or in case such party is a
8 corporation then where it has its principal place of business
9 or engages in business. Whenever a court shall hold that it
10 is without jurisdiction on the ground that application should
11 have been made to some other court, it shall transmit the
12 pleadings and other papers to a court having jurisdiction
13 which shall, after permitting any necessary amendments,
14 thereupon proceed as in other cases and as though the pro-
15 ceeding had originally been filed therein. In any case in
16 which application for such review is filed, timely amend-
17 ments shall be permitted to state additional or subsequent
18 facts and seek additional remedies or relief. Any court
19 having jurisdiction of any part of any controversy regarding
20 any administrative action, rule, or order shall have full juris-
21 diction over all issues in such controversy, with authority
22 to grant all pertinent relief, notwithstanding that some other
23 court may have jurisdiction of some of the issues or parties.
24 The court review herein provided shall be commenced by the
25 complaining party filing in the office of the clerk of the

1 district court having jurisdiction a written complaint or peti-
2 tion setting forth the grounds of complaint and the relief
3 sought. Service of process shall be had and completed by
4 sending by registered mail a true copy of the complaint or
5 petition to the Attorney General of the United States, or
6 to any Assistant Attorney General of the United States at
7 Washington, District of Columbia, and thereupon the cause,
8 except as herein otherwise provided, shall be proceeded with
9 in conformity with the applicable "Rules of Civil Procedure
10 for the District Courts of the United States".

11 (d) REVIEWABLE ACTS.—Any rule shall be reviewable
12 as provided in this section upon its judicial or administra-
13 tive application or threatened application to any person,
14 situation, or subject; and, whether or not declaratory or
15 negative in form or substance, any administrative act or
16 order directing action, assessing penalties, prohibiting con-
17 duct, affecting rights or property, or denying in whole or
18 in part claimed rights, remedies, privileges, permissions,
19 moneys, or benefits under the Constitution, statutes, or
20 other law of the land, except to the extent that any matter
21 of fact is both substantially in dispute and expressly com-
22 mitted by law to absolute executive discretion, shall be
23 subject to review pursuant to this section; but only final
24 actions, rules, or orders, or those for which there is no other
25 adequate judicial remedy (including the neglect, failure, or

1 refusal of any agency to act upon any application for a rule,
2 order, permission, or the amendment or modification thereof,
3 within the time prescribed by law or within a reasonable
4 time), shall be subject to such review; any preliminary or
5 intermediate act or order not directly reviewable shall be
6 subject to review upon the review of final acts, rules, or
7 orders; and any action, rule, or order shall be final for
8 purposes of the review guaranteed by this section notwith-
9 standing that no petition for rehearing, reconsideration, re-
10 opening, or declaratory order has been presented to or ruled
11 upon by the agency involved.

12 (e) INTERIM RELIEF.—Unless the agency of its own
13 motion or on request shall, as hereby authorized, postpone the
14 effective date of any action, rule, or order pending judicial
15 review, every reviewing court, and every court to which a
16 case may be taken on appeal from, or upon application for
17 certiorari or other writ to, a reviewing court, shall have
18 full authority to issue all necessary and appropriate writs,
19 restraining or stay orders, or preliminary or temporary in-
20 junctions, mandatory or otherwise, required in the judgment
21 of such court to preserve the status or rights of the parties
22 pending full review and determination as provided in this
23 section; and any such court shall postpone the effective date
24 of any administrative action, rule, or order to the extent
25 necessary to accord the parties a fair opportunity for judicial

1 review of any substantial question of law. Whenever any
2 legal right, privilege, immunity, permission, relief, or bene-
3 fit expires or is denied, withdrawn, or withheld, in whole or
4 in part, statutes conferring administrative authority in the
5 premises shall be construed, to the extent that such courts
6 so order, to grant or extend the relief requested so far as
7 necessary to preserve the status of the parties or permit just
8 determination and full relief pursuant to this section.

9 (f) SCOPE OF REVIEW.—With reference to any action
10 or the application, threatened application, or terms of any
11 rule or order and notwithstanding the form of the proceed-
12 ing or whether brought by private parties for review or by
13 public officers or others for enforcement, the reviewing court
14 shall consider and decide, so far as necessary to its decision
15 and where raised by the parties, all relevant questions of law
16 arising upon the whole record or such parts thereof as may
17 be cited by any of the parties. Upon such review, the court
18 shall hold unlawful such act or set aside such application,
19 rule, order, or any administrative finding or conclusion made,
20 sanction or requirement imposed, or permission or benefit
21 withheld to the extent that it finds them (1) arbitrary or
22 capricious; (2) contrary to constitutional right, power, priv-
23 ilege, or immunity; (3) in excess of or without lawful author-
24 ity, jurisdiction, or limitations or short of statutory right,
25 grant, privilege, or benefit; (4) made or issued without

1 due observance of procedures required by law; (5) un-
2 supported by competent, material, convincing, and sub-
3 stantial evidence, upon the whole record as reviewed by
4 the court, in any case in which the action, rule, or order
5 is required by statute to be taken, made, or issued after
6 administrative hearing; or (6) unwarranted by the facts
7 to the extent that the facts in any case are subject to
8 trial de novo by the reviewing court. The court shall
9 interpret and determine the applicability of any administra-
10 tive rule or order. The relevant facts shall be tried and deter-
11 mined de novo by the original court of review in all cases in
12 which administrative adjudications are not required by statute
13 to be made upon administrative hearing, and in any case
14 such court shall try and determine de novo the facts as to
15 the failure of any agency or agent thereof to comply with
16 the provisions of this Act. Except as to compromises or
17 settlements freely entered, no contract or other agreement
18 shall be held to diminish the right or scope of review pro-
19 vided by this section.

20 (g) APPELLATE REVIEW.—The judgment of any court
21 of review shall be appealable in accordance with existing
22 provisions of law and, in any case in which there is no appeal
23 thereto as of right and probable ground appears that any
24 person has been denied the full benefit of this Act, reviewable
25 by the Supreme Court on writ of certiorari.

1 (h) OTHER PROVISIONS OF LAW.—All provisions or
2 additional requirements of law applicable to the judicial
3 review of acts, rules, or orders generally or of particular
4 agencies or subject matter, except as the same may be incon-
5 sistent with the provisions of this Act, shall remain valid
6 and binding as shall all statutory provisions expressly pre-
7 cluding judicial review of any agency or function or pre-
8 scribing a broader scope of review than that provided in
9 this Act.

10 SEPARATION OF FUNCTIONS

11 SEC. 10. No proceeding, rule, or order subject to the
12 requirements of sections 6 and 7 shall be lawful unless with
13 reference to that type of proceeding the agency involved
14 shall have previously and completely delegated either to one
15 or more of its responsible officers or to one or more of its
16 members all investigative and prosecuting functions (over
17 which the agency or its remaining membership shall there-
18 after have exercised no control or supervision) and the officers
19 or members so designated shall have had no part in the deci-
20 sion or review of such cases; and, in any agency in which
21 the ultimate authority so subject to sections 6 and 7 is vested
22 in one person, such individual shall wholly delegate such
23 investigating and prosecuting functions to responsible officers.
24 In any complaint or similar paper the agency may appear in
25 name as the moving party; and nothing in this section shall

1 be taken to prevent the supervision, consideration, or accept-
2 ance of settlements or adjustments by hearing or deciding
3 officers. Every general delegation and separation of functions
4 required of any agency by this section shall be specifically
5 provided in its rules published pursuant to section 2.

6 CONSTRUCTION AND EFFECT

7 SEC. 11. Nothing in this Act shall be held to diminish
8 the constitutional rights of any person or to limit or repeal
9 additional requirements imposed by statute or otherwise
10 recognized by law. Except as otherwise expressly author-
11 ized or required by law, all rules, requirements, limitations,
12 rights, privileges, and precedents relating to evidence or pro-
13 cedure shall apply equally to public agencies and private
14 parties. If any provision of this Act or the application
15 thereof is held invalid, the remainder of this Act or other
16 applications of such provision shall not be affected. Every
17 agency is hereby granted all necessary authority to comply
18 with the requirements of this Act; and no subsequent legisla-
19 tion shall be held to supersede or modify the provisions of
20 this Act unless such legislation shall do so expressly and by
21 reference to the provisions of this Act so affected. This Act
22 shall take effect three months after its approval except that
23 sections 6 and 7 shall take effect six months after such
24 approval. In any agency examiners authorized by law may
25 exercise the functions of commissioners or deputy commis-

1 sioners provided by subsection (a) of section 6 until one
2 year after the termination of the present hostilities, and no
3 procedural requirement of this Act shall be mandatory as
4 to any administrative proceeding formally initiated or com-
5 pleted prior to the effective date of such requirement.

A BILL

To improve the administration of justice by
prescribing fair administrative procedure.

By Mr. SMITH of Virginia

JANUARY 3, 1945

Referred to the Committee on the Judiciary

Jan
18.

OFFICE OF BUDGET AND FINANCE
Legislative Reports and Service Section

79th-1st, No. 3

DIGEST OF PROCEEDINGS OF CONGRESS OF INTEREST TO THE DEPARTMENT OF AGRICULTURE
(Issued January 8, 1945, for actions of Saturday, January 6, 1945)

(For staff of the Department only)

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SENATE

1. PRESIDENT'S MESSAGE. Both Houses received the President's annual message on the state of the Union (pp. 67-73, 93-9). The President recommended national-service legislation, induction of nurses for the armed forces, legislation for use of L-F's in war work, development of river basins, farm housing, expansion of the social-security program (to be recommended further at a later date), revision of the post-war tax system to encourage private demand, and universal post-war military training (to be recommended further in a special message).
2. CATTLE PRICES. Sen. Capper, Kans., criticized OPA's proposal to place a price ceiling on live cattle of \$17.50 a hundred pounds and inserted communications from Kansas State officials on this subject (p. 75).
3. REPORTS. Received the following reports: Federal Surplus Commodities Corporation, regional research laboratories, agricultural experiment stations, extension work, operations under the Soil Conservation and Domestic Allotment Act, General Accounting Office, Tennessee Valley Authority, Tariff Commission, War Mobilization and Reconversion, operations under the Synthetic Fuels Act, and the National Forest Reservation Commission (the last named to be printed as S. Doc. 1). To various committees. (pp. 73-4.)
4. ST. LAWRENCE WATERWAY. Sen. Aiken, Vt., inserted a communication from Milwaukee City officials favoring legislation providing for the construction of this project (pp. 75-6).
5. ADJOURNED until Wednesday, Jan. 10 (p. 88).

HOUSE

6. REPORT. Received FWA's annual report for the fiscal year 1944. To Public Buildings and Grounds Committee. (p. 100.)

7. SURPLUS PROPERTY. Rep. Larcade, La., criticized the dismantling of war industries so as to result in a loss to the community in which such industry was located (p. 91).
War

Both Houses received the report of the Surplus/Property Administration. To House Expenditures in the Executive Departments Committee and the Senate Military Affairs Committee. (pp. 74, 99).

Both Houses received the Surplus Property Board's interim report. To House Expenditures in the Executive Departments Committee and the Senate Military Affairs Committee. (pp. 74, 99).

8. GUAYULE-RUBBER INVESTIGATION. Received (Jan. 2) from the Agriculture Committee the report of the Poage Subcommittee, pursuant to H. Res. 346, 78th Cong., on the guayule-rubber investigation (H. Rept. 2098). The subcommittee recommended: (1) Continuation of Federal guayule research, (2) disassociation of the Government with the production and processing of guayule for any but experimental purposes, (3) preservation of all existing planting of guayule rubber so long as the war continues and natural rubber from the Far East is not available; (4) establishment of a definite floor under the price of domestically produced guayule rubber in order to establish a sound post-war industry in private hands; and (5) continuation of a congressional study of the rubber-production program, giving attention not only to war needs but also to the long-time needs of agriculture.

9. REPORTS. Received from the House Clerk a list of reports required by law from the executive agencies. To Accounts Committee. (H. Doc. 17.) (p. 99.)

10. ADJOURNED until Mon., Jan. 8 (p. 99).

BILLS INTRODUCED

11. ADMINISTRATIVE LAW. S. 7, by Sen. McCarran, Nev., to improve the administration of justice by prescribing fair administrative procedure. To Judiciary Committee. (p. 78.)
S. 92, by Sen. Lucas, Ill., relating to the admission of attorneys at law to practice before departments and agencies of the Government. To Judiciary Committee. (p. 80.)
H. R. 1117, by Rep. Craven, Ark., to improve administration of justice by prescribing fair administrative procedure. To Judiciary Committee. (p. 100.)
12. AGRICULTURAL AWARDS. S. J. Res. 3, by Sen. Hill, Ala., providing for awards of honor for agricultural production. To Military Affairs Committee. (p. 81.)
13. ALCOHOL INVESTIGATION. S. Res. 17, by Sen. McCarran, Nev., to continue the alcohol beverage industry investigation. To Judiciary Committee. (p. 85.)
14. APPOINTMENT. S. 129, by Sen. Bilbo, Miss., to remove certain restrictions relating to the appointment of retired commissioned officers to civilian positions. To Military Affairs Committee. (p. 81.)
H. R. 1108, by Rep. Abernethy, Miss., to establish uniform procedure relative to the proof of age, place of birth, or of death. To Judiciary Committee. (p. 100.)
15. BANKING AND CURRENCY. S. Res. 13, by Sen. McCarran, Nev., to authorize an investigation of the proposals for the stabilization of currencies and exchange values. To Banking and Currency Committee. (p. 84.)

79TH CONGRESS
1ST SESSION

H. R. 1117

79TH CONGRESS
1ST SESSION

H. R. 1117

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1945

Mr. CRAVENS introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To improve the administration of justice by prescribing fair administrative procedure.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act, divided into sections, subsections, and sub-
4 paragraphs, may be cited as the “Administrative Procedure
5 Act”.

DEFINITIONS

7 “Agency” means each office, board, commission, inde-
8 pendent establishment, authority, corporation, department,
9 bureau, division, institution, service, administration, or other
10 unit of the Federal Government other than Congress, the
11 courts, or the governments of the possessions, Territories,

1 or the District of Columbia. "Rule" means the written
2 statement of any regulation, standard, policy, interpretation,
3 procedure, requirement, or other writing issued or utilized
4 by any agency, of general applicability and designed to
5 implement, interpret, or state the law or policy administered
6 by, or the organization and procedure of, any agency; and
7 "rule making" means the administrative procedure for the
8 formulation of a rule. "Adjudication" means the adminis-
9 trative procedure of any agency, and "order" means its
10 disposition or judgment (whether or not affirmative, nega-
11 tive, or declaratory in form), in a particular instance other
12 than rule making and without distinction between licensing
13 and other forms of administrative action or authority.

14 PUBLIC INFORMATION

15 SEC. 2. Except to the extent that there is directly
16 involved any military, naval, or diplomatic function of the
17 United States requiring secrecy in the public interest—

18 (a) RULES.—Every agency shall separately state and
19 currently publish rules containing (1) descriptions of its
20 complete internal and field organization, together with the
21 general course and method by which each type of matter
22 directly affecting private parties is channeled and deter-
23 mined; (2) substantive regulations authorized by law and
24 adopted by the agency, as well as any statements of general
25 policy or interpretations framed by the agency and of general

1 public application; and (3) the nature and requirements of
2 all formal or informal procedures available to private parties,
3 including instructions and simplified forms respecting the
4 scope and contents of all papers, reports, or examinations.

5 All such rules shall be filed with the Division of the Federal
6 Register and currently published in the Federal Register.

7 (b) RULINGS AND ORDERS.—Every agency shall pre-
8 serve and publish or make available to public inspection all
9 general rulings on questions of law and all opinions rendered
10 or orders issued in the course of adjudication, except to the
11 extent (1) required by rule for good cause and expressly
12 authorized by law to be held confidential or (2) relating
13 to the internal management of the agency and not directly
14 affecting the rights of, or procedures available to, the public.

15 (c) RELEASES.—Except to the extent that their con-
16 tents are included in the materials issued or made available
17 pursuant to subsections (a) and (b) of this section, every
18 agency shall, either prior to or upon issuance, file with or
19 register and mail to the Division of the Federal Register
20 all other releases intended for general public information or
21 of general application or effect; and the Division shall pre-
22 serve and make all such filings available to public inspection
23 in the same manner as documents published in the Federal
24 Register.

25 (d) ENFORCEMENT.—No person or party shall be

1 prejudiced in any manner for failure to avail himself of
2 agency organization or procedure not published as required
3 by subsection (a) of this section, or for resort to such organi-
4 zation or procedure. The Comptroller General shall disallow
5 the expenditure of public funds for the maintenance or
6 operation of any agency organization or procedure not pub-
7 lished as required by subsection (a).

8 RULE MAKING

9 SEC. 3. Except to the extent that there is directly
10 involved any military, naval, or diplomatic function of the
11 United States, and prior to the issuance of any rule—

12 (a) NOTICE.—Every agency shall publish general notice
13 of proposed rule making, including (1) a statement of the
14 time, place, and nature of public rule-making procedures;
15 (2) reference to the authority under which the rule is
16 proposed; and (3) a description of the subjects and issues
17 involved; but this subsection shall apply only to substantive
18 rules, shall not be mandatory as to interpretative rules,
19 general statements of policy, or rules of agency organization
20 or administrative procedure, and shall not apply in cases in
21 which notice is impracticable because of unavoidable lack
22 of time or other emergency.

23 (b) PROCEDURES.—In all cases in which notice of rule
24 making is required pursuant to subsection (a) of this section,
25 the agency shall afford interested parties an adequate oppor-

1 tunity, reflected in its published rules of procedure, to par-
2 ticipate in the formulation of the proposed rule or rules
3 through (1) submission of written data or views, (2) at-
4 tendance at conferences or consultations, or (3) presentation
5 of facts or argument at informal hearings. Parties unable to
6 be present shall be entitled as of right to submit written
7 data or arguments. All relevant matter presented shall be
8 recorded or summarized and given full consideration by the
9 agency. The reasons and conclusions of the agency shall be
10 published upon the issuance or rejection of the rules or pro-
11 posals involved. Agencies are authorized to adopt proced-
12 ures in addition to those required by this section, including
13 the promulgation of rules sufficiently in advance of their
14 effective date to permit the submission of criticisms or data
15 by interested parties and consideration and revision or sus-
16 pension of the rules by the agency. Nothing in this section
17 shall be held to limit or repeal additional requirements im-
18 posed by law. In place of the foregoing provisions of this
19 subsection, in all cases in which rules are required by statute
20 to be issued only after a hearing the full hearing and deci-
21 sion requirements of sections 6 and 7 shall apply.

22 (c) PETITIONS.—Every agency authorized to issue rules
23 shall accord any interested person the right to petition for
24 the issuance, amendment, rescission, or clarification of any
25 rule, in conformity with adequate published procedures for the

1 submission and prompt consideration and disposition of such
2 requests.

3 ADJUDICATION

4 SEC. 4. In every administrative adjudication in which
5 the rights, duties, obligations, privileges, benefits, or other
6 legal relations of any person are required by statute to be
7 determined only after opportunity for an administrative
8 hearing—

9 (a) NOTICE.--In cases in which the agency is the mov-
10 ing party it shall give due and adequate notice in writing
11 specifying (1) the time, place, and nature of relevant admin-
12 istrative proceedings, (2) the particular legal authority and
13 jurisdiction under which the proposed proceeding is to be
14 had, and (3) the matters of fact and law in issue. In in-
15 stances in which private persons are the moving parties, the
16 agency or other respondents shall give prompt notice of
17 averments, claims, or issues controverted in fact or law. The
18 statement of issues of fact in the language of statutory stand-
19 ards delegating general authority or jurisdiction to the agency
20 involved shall not be compliance with this subsection.

21 (b) PROCEDURE.—Prior to the adjudication of any
22 case the agency shall afford all interested parties the right
23 and benefit of fair procedure for the settlement or adjudica-
24 tion of all relevant issues through (1) an adequate oppor-
25 tunity for the informal submission and full consideration of

1 facts, claims, argument, offers of settlement, or proposals of
2 adjustment; and (2) thereafter, to the extent that the parties
3 are unable to so determine any controversy by consent, full
4 hearing and decision shall be accorded the parties in con-
5 formity with sections 6 and 7. In cases in which determina-
6 tions rest upon physical inspections or tests, opportunity
7 for fair and adequate retest or reinspection by superior officers
8 shall be provided, and thereafter hearing and decision in com-
9 pliance with sections 6 and 7 shall be made available to the
10 parties. In all instances in which statutes authorize and
11 unavoidable limitations of time or other substantial factors
12 are found to require summary action (whether of an emer-
13 gency character or whether preliminary, intermediate, or final,
14 and including the issuance of stop orders or their equivalents),
15 no action so taken shall be lawful unless opportunity for in-
16 formal conference with the agency or with responsible officers
17 thereof shall first have been made available for the prompt
18 adjustment or other fair disposition by consent of all relevant
19 issues of law or fact; and no summary action so taken shall
20 be lawful unless within a reasonable time thereafter the par-
21 ties shall have been afforded an adequate opportunity for
22 hearing and decision in accordance with sections 6 and 7.

23 (c) DECLARATORY ORDERS.—Every agency shall make
24 and issue declaratory orders to terminate a controversy or to
25 remove uncertainty as to the validity or application of any

1 administrative authority, discretion, rule, or order with the
2 same effect and subject to the same judicial review as in
3 the case of other orders of the agency; but such orders
4 shall be issued only upon the petition of a party in interest, in
5 conformity with the notice and procedure required by this
6 section, and to the extent that the agency is authorized by
7 statute to issue orders after administrative hearing.

8 ANCILLARY MATTERS

9 SEC. 5. In connection with any administrative rule mak-
10 ing adjudication, investigation, or other proceeding or
11 authority—

12 (a) APPEARANCE.—Except as otherwise provided by
13 sections 6 and 7, every agency shall accord every person
14 subject to administrative authority and every party or inter-
15 venor (including individuals, partnerships, corporations, asso-
16 ciations, or public or private agencies or organizations of
17 any character) in any administrative proceeding or in con-
18 nection with any administrative authority the right at all
19 reasonable times to appear in person or by counsel before it
20 and its officers or employees, and shall afford such parties so
21 appearing every reasonable opportunity and facility for
22 negotiation, information, adjustment, or formal or informal
23 determination of any issue, request, or controversy. Every
24 person personally appearing or summoned in any adminis-
25 trative proceeding shall be freely accorded the right to be

1 accompanied and advised by counsel. Every person subject
2 to administrative authority or party to any administrative
3 proceeding shall be entitled to a prompt determination of any
4 matter within the jurisdiction of any agency. In fixing the
5 times and places for formal or informal proceedings due
6 regard shall be had for the convenience and necessity of the
7 parties or their representatives.

8 (b) INVESTIGATIONS.—No agency shall issue process,
9 make inspections, require reports, or otherwise exercise in-
10 vestigative powers except (1) as expressly authorized by
11 law, (2) within its jurisdiction, (3) where substantially
12 necessary to its operations, (4) through its regularly author-
13 ized representatives, (5) without disturbing rights of per-
14 sonal privacy, and (6) in such manner as not to interfere
15 with private occupation or enterprise beyond the require-
16 ments of adequate law enforcement. The exercise of such
17 powers or use of any information so acquired for the effec-
18 tuation of purposes, powers, or policies of any other agency
19 or person shall be unlawful except as expressly authorized by
20 statute.

21 (c) SUBPENAS.—Every agency shall issue subpoenas au-
22 thorized by law to private parties upon request. Upon con-
23 test of the validity of any administrative subpoena or upon the
24 attempted enforcement thereof, the court which would have

1 jurisdiction under section 9 hereof shall determine all ques-
2 tions of law raised by the parties, including the authority
3 or jurisdiction of the agency in law or fact, whether or not
4 the compliance would be unreasonable or oppressive, and
5 shall enforce (by the issuance of a judicial order requiring the
6 future production of evidence under penalty of punishment for
7 contempt in case of contumacious failure to do so) or refuse
8 to enforce such subpoena accordingly.

9 (d) DENIALS.—Every agency shall give prompt notice
10 of the denial, in whole or in part, of any application, petition,
11 or other request of any private party. Such notice shall be
12 accompanied by a statement of the grounds for such denial
13 and any further administrative procedures available to such
14 party.

15 (e) RETROACTIVITY.—No rule or order shall be retro-
16 active or effective prior to its publication or service unless
17 such effect is both expressly authorized by law and required
18 for good cause. Such required publication or service shall
19 precede for a reasonable time the effective date of the rule
20 or order.

21 (f) RECORDS.—Upon proper request matters of official
22 record shall be made available to all interested persons except
23 personal data, information required by law to be held con-
24 fidential, or, for good cause found and upon published rule,
25 other specified classes of information.

1 (g) ATTORNEYS.—No agency shall impose requirements
2 for the admission of attorneys to practice before it or its
3 officers or employees; and attorneys in good standing ad-
4 mitted to practice in the highest court of any State or other
5 place within the jurisdiction of the United States or in any
6 Federal court shall, upon their oral or written representation
7 to that effect, forthwith be admitted to such practice. No
8 agency shall debar or suspend any such attorney from such
9 practice except for violation of law, and such action shall be
10 subject to judicial review de novo upon the law and the facts.

11 HEARINGS

12 SEC. 6. No administrative procedure shall satisfy the
13 requirements of a full hearing pursuant to section 3 or 4
14 unless—

15 (a) PRESIDING OFFICERS.—(1) The case shall be heard
16 by Commissioners or Deputy Commissioners appointed as
17 provided herein, except where statutes authorize action by
18 representatives of parties or organizations of parties. In
19 the event hearing or deciding officers are no longer in office
20 or are unavailable because of death, illness, or suspension,
21 other such officers may be substituted in the sound discretion
22 of the Commissioners at any stage of proceedings required by
23 this section and section 7.

24 (2) The functions of all hearing officers, as well as of
25 those participating in decisions in conformity with section 7,

1 shall be conducted in an impartial manner, in accord with the
2 requirements of this Act, with due regard for the rights of all
3 parties, and consistent with the orderly and prompt dispatch
4 of proceedings. Such officers, except to the extent required
5 for the disposition of ex parte matters authorized by law,
6 shall not engage in interviews with, or receive evidence or
7 argument from, any party directly or indirectly except upon
8 opportunity for all other parties to be present and in accord
9 with the public procedures authorized by this section and
10 section 7. Copies of all communications with such officers
11 shall be served upon all the parties. Upon the filing of a
12 timely affidavit by any party in interest, of personal bias or
13 disqualification or conduct contrary to law of any such officer
14 at any stage of proceedings, another Commissioner or Deputy
15 Commissioner, after hearing the facts shall make findings,
16 conclusions, and a decision as to such disqualification which
17 shall become a part of the record in the case and be review-
18 able in conformity with section 9 and subsection (c) of
19 section 7.

20 (3) By and with the advice and consent of the Senate,
21 there shall be appointed by the President three Commission-
22 ers, at an annual salary of \$10,000, who shall not be remov-
23 able except for good cause shown, may annually designate one
24 of their number as the presiding Commissioner, and shall hold
25 office for terms of twelve years except that the first three

1 appointments shall be for four, eight, and twelve years, re-
2 spectively, and any unexpired term shall be filled upon
3 appointment for the unexpired portion only.

4 (4) Without regard to the civil-service laws or the
5 Classification Act, the Commissioners shall appoint, in lieu
6 of examiners now employed by agencies for the performance
7 of functions subject to this section and section 7, as many
8 duly qualified and competent Deputy Commissioners as may
9 from time to time be necessary for the hearing or decision
10 of cases, who shall perform no other duties, shall be remov-
11 able only after hearing and for good cause shown, and shall
12 receive a fixed salary not subject to change except that the
13 Commissioners shall survey and adjust such salaries within
14 minimum and maximum limits of \$3,000 and \$9,000, re-
15 spectively, in order to assure adequacy and uniformity in
16 accordance with the nature and importance of the duties
17 performed.

18 (5) The Commissioners shall hear and decide cases or
19 assign Deputy Commissioners to such duties in accordance
20 with such rules as they may adopt and publish in conformity
21 with this Act, make such appointments and provide such
22 clerical assistance and facilities as may be necessary to the
23 functions assigned by this Act, and submit full annual reports
24 to Congress in addition to such special reports or recom-
25 mendations from time to time as they deem advisable. There

1 is authorized to be appropriated such funds as may be neces-
2 sary for the purposes of this section.

3 (c) HEARING POWERS.—Officers presiding at hearings
4 shall have power, in accordance with the published rules of
5 the agency so far as not inconsistent with this Act or with
6 the rules promulgated by the Commissioners provided in
7 subsection (a) of this section, to (1) administer oaths and
8 affirmations; (2) issue such subpoenas as may be authorized
9 by law; (3) rule upon offers of proof and receive relevant
10 oral or documentary evidence; (4) take or cause depositions
11 to be taken whenever the ends of justice would be served
12 thereby; (5) regulate the course of the hearing or the con-
13 duct of the parties; (6) hold informal conferences for the
14 settlement or simplification of the issues by consent of the
15 parties; (7) dispose of procedural motions, requests for
16 adjournment, and similar matters; and (8) make or par-
17 ticipate in decisions in conformity with section 7.

18 (d) EVIDENCE.—No sanction, prohibition, or require-
19 ment shall be imposed or grant, permission, or benefit with-
20 held in whole or in part except upon relevant evidence
21 which on the whole record shall be competent, credible,
22 and substantial. The rules of evidence recognized in judicial
23 proceedings conducted without a jury shall govern the proof,
24 decision, and administrative or judicial review of all ques-
25 tions of fact. The character and conduct of every person

1 or enterprise shall be presumed lawful until the contrary
2 shall have been shown by competent evidence. Whenever
3 the burden of proof is upon private parties to show right
4 or entitlement to privileges, permits, benefits, or statutory
5 exceptions, their competent evidence (other than opinions
6 or conclusions) to that effect shall be presumed true unless
7 discredited or contradicted by other competent evidence.
8 Every party shall have the right of cross-examination and
9 the submission of rebuttal evidence in open hearing, except
10 that any agency may adopt procedures for the disposition
11 of contested matters in whole or in part upon the submission
12 of sworn statements or written evidence subject to oppor-
13 tunity for such cross-examination or rebuttal. The taking
14 of official notice as to facts beyond the proof adduced in
15 conformity with this section shall be unlawful unless of a
16 matter of generally recognized or scientific knowledge of
17 established character and unless the parties shall both be
18 notified (either upon the record or in reports, findings, or
19 decisions) of the specific facts so noticed and accorded an
20 adequate opportunity to show the contrary by evidence.

21 (e) RECORD.—The transcript of testimony adduced and
22 exhibits admitted in conformity with this section, together
23 with all pleadings, exceptions, motions, requests, and papers
24 filed by the parties, other than separately presented briefs

1 or arguments of law, shall constitute the complete and ex-
2 clusive record and be made available to all the parties.

3 DECISIONS

4 SEC. 7. In all cases in which an administrative hearing
5 is required to be conducted in conformity with section 6—

6 (a) INITIAL SUBMISSION.—At the conclusion of the
7 reception of evidence, the officer or officers who presided
8 shall afford the parties adequate opportunity for the sub-
9 mission of briefs, proposed findings and conclusions, and oral
10 argument.

11 (b) DECISION.—After the initial submission pursuant
12 to subsection (a) of this section, the officer or officers who
13 heard the evidence shall find all the relevant facts and enter
14 an appropriate order, award, judgment, or other form of
15 determination. In the absence (within such reasonable
16 time as it may prescribe by general rule) of either an appeal
17 to the agency (upon such specification of errors as it may
18 require by general rule) or review upon the agency's own
19 motion and specification of issues, such decisions shall with-
20 out further proceedings become final determinations and be
21 effective, enforceable, and subject to judicial review pursuant
22 to section 9 to the same extent and in the same manner as
23 though duly heard, decided, and entered by the agency itself.

24 (c) AGENCY REVIEW.—Upon appeal to the agency from
25 the decisions provided in subsection (b) of this section, the

1 highest authority in the agency shall (1) afford the parties
2 due notice of the specific issues to be reviewed, (2) provide
3 an adequate opportunity for the presentation of briefs, pro-
4 posed findings and conclusions, and oral argument by the
5 parties, and (3) affirm, reverse, modify, change, alter,
6 amend, remand, or set aside in whole or in part such de-
7 cision; but the failure of the parties to seek, or of the agency
8 to require, such review shall not affect the right of judicial
9 review pursuant to section 9. Such review by the agency
10 shall be confined to matters of law and administrative dis-
11 cretion.

12 (d) CONSIDERATION OF CASES.—All issues of fact shall
13 be considered and determined exclusively upon the record
14 required to be made in conformity with section 6. In the
15 decision of any case initially or upon review by the agency,
16 all hearing, deciding, or reviewing officers shall personally
17 consider the whole or such parts of the record as are cited
18 by the parties, with no other aid than that of clerks or
19 assistants who perform no other duties; and no such officer,
20 clerk, or assistant shall consult with or receive oral or written
21 comment, advice, data, or recommendations respecting any
22 such case from other officers or employees of the agency or
23 from third parties.

24 (e) FINDINGS AND OPINIONS.—All final decisions and
25 determinations, whether initially or upon review by the ulti-

1 mate authority within the agency, shall be stated in writing
2 and accompanied by a statement of reasons, findings of fact,
3 and conclusions of law upon all relevant issues raised including
4 matters of administrative discretion as well as of law or fact.
5 The findings, conclusions, and stated reasons shall encompass
6 all relevant facts of record and shall themselves be relevant
7 to, and adequate support, the decision and order or award
8 entered.

9 (f) SERVICE.—All administrative findings, conclusions,
10 opinions, or statements of reasons, rules, or orders required
11 to be made in conformity with this section shall be served
12 upon all the parties and intervenors or other participants in
13 the proceeding as well as upon all persons whose attempted
14 intervention or participation has been denied and all inter-
15 ested persons who request in writing to be so notified.

16 PENALTIES AND BENEFITS

17 SEC. 8. In addition to all other limitations or require-
18 ments provided by law—

19 (a) LIMITATIONS.—No agency shall by order, rule, or
20 other act (1) impose or grant any form of sanction or relief
21 not specified by statute and within the jurisdiction expressly
22 delegated to the agency by law; (2) withhold relief in der-
23 ogation of private right or statutory entitlement; or (3)
24 impose sanctions inapplicable to the factual situation pre-
25 sented in any case. Sanction or relief includes, but is not

1 limited to, the imposition, withholding, grant, denial, sus-
2 pension, withdrawal, revocation, or annulment, as the case
3 may be, of any form of privilege, license, permission, remedy,
4 benefit, assistance, prohibition, requirement, limitation,
5 penalty, fine, taking or seizure of private property, or assess-
6 ment of damages, costs, charges, or fees. The exercise, or
7 attempted exercise, of implied powers by any agency to
8 make substantive rules, adjudicate cases, or impose penalties
9 or requirements or withhold benefits is unlawful for any
10 purpose.

11 (b) LICENSES.—In addition to the requirements of
12 subsection (a) of this section, (1) in any case, except
13 financial reorganization, in which an administrative license
14 (including permit, certificate, approval, registration, charter,
15 membership, or other form of permission) is required by
16 law and due request is made therefor such license shall be
17 deemed granted in full to the extent of the authority of the
18 agency unless the agency shall within not more than sixty
19 days of such application have made its decision or set the
20 matter for formal proceedings required to be conducted
21 pursuant to sections 6 and 7 of this Act; (2) except in
22 cases of clearly demonstrated willfulness or those in which
23 public health, morals, or safety require otherwise, no with-
24 drawal, suspension, revocation, or annulment of any such
25 license shall be lawful unless, prior to the institution of

1 administrative proceedings therefor, any facts or conduct
2 of which the agency has notice and which may warrant
3 such action shall have been called to the attention of the
4 licensee in writing and such person shall have been ac-
5 corded a reasonable opportunity to demonstrate or achieve
6 compliance with all lawful requirements; (3) no such license
7 with reference to any business, occupation, or activity of a
8 continuing nature shall expire, in any case in which the
9 holder thereof has made due and timely application for a
10 renewal or a new license, until such application shall have
11 been finally determined by the agency concerned.

12 (c) PUBLICITY.—Except as expressly authorized by
13 law, no agency shall, directly or indirectly, issue publicity
14 reflecting adversely upon any person, product, commodity,
15 security, private activity, or enterprise otherwise than by
16 issuance of the full texts of authorized public documents,
17 impartial summaries of the positions of all parties to any
18 controversy, or the issuance of legal notice of public pro-
19 ceedings within its jurisdiction.

20 JUDICIAL REVIEW

21 SEC. 9. In connection with any Act, rule, order, process,
22 or proceeding of any agency—

23 (a) RIGHT OF REVIEW.—Any party adversely affected
24 shall be entitled to judicial review of any issue of law in
25 accordance with this section; and every reviewing court shall

1 have plenary authority to render such decision and grant
2 such relief as right and justice may demand in conformity
3 with law and this Act.

4 (b) FORM OF ACTION.—In addition to judicial review
5 incident to proceedings for any form of criminal or civil en-
6 forcement of administrative rules, orders, or process, the
7 form of proceeding for judicial review shall be any special
8 statutory review proceeding relevant to the subject matter
9 or, in the absence or inadequacy thereof, any applicable form
10 of legal action including actions for declaratory judgments or
11 writs of injunction or habeas corpus. Any party adversely
12 affected or threatened to be so affected may, through decla-
13 ratory judgment procedure with or without prior resort to the
14 issuing agency, secure a judicial declaration of rights respect-
15 ing the validity or application of any administrative act, rule,
16 or order. Except as otherwise provided in connection with
17 special statutory review proceedings, any action for judicial
18 review may be brought against one or more of the following:
19 (1) The agency in its official title at the time of the filing
20 of the proceeding; (2) the officer who is the head of, or
21 one or more of the officers comprising the highest authority
22 in, the agency; or (3) any one or more officers acting in
23 the manner challenged or enforcing or authorized to enforce
24 the rule or order involved.

25 (c) COURTS AND VENUE.—The review guaranteed by

1 this section shall be had upon application to the courts named
2 in statutes especially providing for judicial review or, in the
3 absence or inadequacy thereof, to the district court of the
4 United States (including the District Court of the District
5 of Columbia) in the State, district, and division where the
6 party seeking court review or any one of them resides or
7 has his principal place of business or in case such party is a
8 corporation then where it has its principal place of business
9 or engages in business. Whenever a court shall hold that it
10 is without jurisdiction on the ground that application should
11 have been made to some other court, it shall transmit the
12 pleadings and other papers to a court having jurisdiction
13 which shall, after permitting any necessary amendments,
14 thereupon proceed as in other cases and as though the pro-
15 ceeding had originally been filed therein. In any case in
16 which application for such review is filed, timely amend-
17 ments shall be permitted to state additional or subsequent
18 facts and seek additional remedies or relief. Any court
19 having jurisdiction of any part of any controversy regarding
20 any administrative action, rule, or order shall have full juris-
21 diction over all issues in such controversy, with authority
22 to grant all pertinent relief, notwithstanding that some other
23 court may have jurisdiction of some of the issues or parties.
24 The court review herein provided shall be commenced by the
25 complaining party filing in the office of the clerk of the

1 district court having jurisdiction a written complaint or peti-
2 tion setting forth the grounds of complaint and the relief
3 sought. Service of process shall be had and completed by
4 sending by registered mail a true copy of the complaint or
5 petition to the Attorney General of the United States, or
6 to any Assistant Attorney General of the United States at
7 Washington, District of Columbia, and thereupon the cause,
8 except as herein otherwise provided, shall be proceeded with
9 in conformity with the applicable "Rules of Civil Procedure
10 for the District Courts of the United States".

11 (d) REVIEWABLE ACTS.—Any rule shall be reviewable
12 as provided in this section upon its judicial or administra-
13 tive application or threatened application to any person,
14 situation, or subject; and, whether or not declaratory or
15 negative in form or substance, any administrative act or
16 order directing action, assessing penalties, prohibiting con-
17 duct, affecting rights or property, or denying in whole or
18 in part claimed rights, remedies, privileges, permissions,
19 moneys, or benefits under the Constitution, statutes, or
20 other law of the land, except to the extent that any matter
21 of fact is both substantially in dispute and expressly com-
22 mitted by law to absolute executive discretion, shall be
23 subject to review pursuant to this section; but only final
24 actions, rules, or orders, or those for which there is no other
25 adequate judicial remedy (including the neglect, failure, or

1 refusal of any agency to act upon any application for a rule,
2 order, permission, or the amendment or modification thereof,
3 within the time prescribed by law or within a reasonable
4 time), shall be subject to such review; any preliminary or
5 intermediate act or order not directly reviewable shall be
6 subject to review upon the review of final acts, rules, or
7 orders; and any action, rule, or order shall be final for
8 purposes of the review guaranteed by this section notwith-
9 standing that no petition for rehearing, reconsideration, re-
10 opening, or declaratory order has been presented to or ruled
11 upon by the agency involved.

12 (e) INTERIM RELIEF.—Unless the agency of its own
13 motion or on request shall, as hereby authorized, postpone the
14 effective date of any action, rule, or order pending judicial
15 review, every reviewing court, and every court to which a
16 case may be taken on appeal from, or upon application for
17 certiorari or other writ to, a reviewing court, shall have
18 full authority to issue all necessary and appropriate writs,
19 restraining or stay orders, or preliminary or temporary in-
20 junctions, mandatory or otherwise, required in the judgment
21 of such court to preserve the status or rights of the parties
22 pending full review and determination as provided in this
23 section; and any such court shall postpone the effective date
24 of any administrative action, rule, or order to the extent
25 necessary to accord the parties a fair opportunity for judicial

1 review of any substantial question of law. Whenever any
2 legal right, privilege, immunity, permission, relief, or bene-
3 fit expires or is denied, withdrawn, or withheld, in whole or
4 in part, statutes conferring administrative authority in the
5 premises shall be construed, to the extent that such courts
6 so order, to grant or extend the relief requested so far as
7 necessary to preserve the status of the parties or permit just
8 determination and full relief pursuant to this section.

9 (f) SCOPE OF REVIEW.—With reference to any action
10 or the application, threatened application, or terms of any
11 rule or order and notwithstanding the form of the proceed-
12 ing or whether brought by private parties for review or by
13 public officers or others for enforcement, the reviewing court
14 shall consider and decide, so far as necessary to its decision
15 and where raised by the parties, all relevant questions of law
16 arising upon the whole record or such parts thereof as may
17 be cited by any of the parties. Upon such review, the court
18 shall hold unlawful such act or set aside such application,
19 rule, order, or any administrative finding or conclusion made,
20 sanction or requirement imposed, or permission or benefit
21 withheld to the extent that it finds them (1) arbitrary or
22 capricious; (2) contrary to constitutional right, power, priv-
23 ilege, or immunity; (3) in excess of or without lawful author-
24 ity, jurisdiction, or limitations or short of statutory right,
25 grant, privilege, or benefit; (4) made or issued without

1 due observance of procedures required by law; (5) un-
2 supported by competent, material, convincing, and sub-
3 stantial evidence, upon the whole record as reviewed by
4 the court, in any case in which the action, rule, or order
5 is required by statute to be taken, made, or issued after
6 administrative hearing; or (6) unwarranted by the facts
7 to the extent that the facts in any case are subject to
8 trial de novo by the reviewing court. The court shall
9 interpret and determine the applicability of any administra-
10 tive rule or order. The relevant facts shall be tried and deter-
11 mined de novo by the original court of review in all cases in
12 which administrative adjudications are not required by statute
13 to be made upon administrative hearing, and in any case
14 such court shall try and determine de novo the facts as to
15 the failure of any agency or agent thereof to comply with
16 the provisions of this Act. Except as to compromises or
17 settlements freely entered, no contract or other agreement
18 shall be held to diminish the right or scope of review pro-
19 vided by this section.

20 (g) APPELLATE REVIEW.—The judgment of any court
21 of review shall be appealable in accordance with existing
22 provisions of law and, in any case in which there is no appeal
23 thereto as of right and probable ground appears that any
24 person has been denied the full benefit of this Act, reviewable
25 by the Supreme Court on writ of certiorari.

1 (h) OTHER PROVISIONS OF LAW.—All provisions or
2 additional requirements of law applicable to the judicial
3 review of acts, rules, or orders generally or of particular
4 agencies or subject matter, except as the same may be incon-
5 sistent with the provisions of this Act, shall remain valid
6 and binding as shall all statutory provisions expressly pre-
7 cluding judicial review of any agency or function or pre-
8 scribing a broader scope of review than that provided in
9 this Act.

10 SEPARATION OF FUNCTIONS

11 SEC. 10. No proceeding, rule, or order subject to the
12 requirements of sections 6 and 7 shall be lawful unless with
13 reference to that type of proceeding the agency involved
14 shall have previously and completely delegated either to one
15 or more of its responsible officers or to one or more of its
16 members all investigative and prosecuting functions (over
17 which the agency or its remaining membership shall there-
18 after have exercised no control or supervision) and the officers
19 or members so designated shall have had no part in the deci-
20 sion or review of such cases; and, in any agency in which
21 the ultimate authority so subject to sections 6 and 7 is vested
22 in one person, such individual shall wholly delegate such
23 investigating and prosecuting functions to responsible officers.
24 In any complaint or similar paper the agency may appear in
25 name as the moving party; and nothing in this section shall

1 be taken to prevent the supervision, consideration, or accept-
2 ance of settlements or adjustments by hearing or deciding
3 officers. Every general delegation and separation of functions
4 required of any agency by this section shall be specifically
5 provided in its rules published pursuant to section 2.

6 CONSTRUCTION AND EFFECT

7 SEC. 11. Nothing in this Act shall be held to diminish
8 the constitutional rights of any person or to limit or repeal
9 additional requirements imposed by statute or otherwise
10 recognized by law. Except as otherwise expressly author-
11 ized or required by law, all rules, requirements, limitations,
12 rights, privileges, and precedents relating to evidence or pro-
13 cedure shall apply equally to public agencies and private
14 parties. If any provision of this Act or the application
15 thereof is held invalid, the remainder of this Act or other
16 applications of such provision shall not be affected. Every
17 agency is hereby granted all necessary authority to comply
18 with the requirements of this Act; and no subsequent legisla-
19 tion shall be held to supersede or modify the provisions of
20 this Act unless such legislation shall do so expressly and by
21 reference to the provisions of this Act so affected. This Act
22 shall take effect three months after its approval except that
23 sections 6 and 7 shall take effect six months after such
24 approval. In any agency examiners authorized by law may
25 exercise the functions of commissioners or deputy commis-

1 sioners provided by subsection (a) of section 6 until one
2 year after the termination of the present hostilities, and no
3 procedural requirement of this Act shall be mandatory as
4 to any administrative proceeding formally initiated or com-
5 pleted prior to the effective date of such requirement.

A BILL

To improve the administration of justice by
prescribing fair administrative procedure.

By Mr. CRAVENS

JANUARY 6, 1945

Referred to the Committee on the Judiciary

IN THE SENATE OF THE UNITED STATES

JANUARY 6, 1945

Mr. McCARRAN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To improve the administration of justice by prescribing fair administrative procedure.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Administrative Procedure
4 Act".

5 DEFINITIONS

6 SEC. 2. As used in this Act—

7 (a) AGENCY.—"Agency" means each authority of the
8 Government of the United States other than Congress, the
9 courts, or the governments of the possessions, Territories, or
10 the District of Columbia. Except as to the requirements
11 of section 3, there shall be excluded from the operation

1 of this Act (1) functions which by law expire on the termi-
2 nation of present hostilities, within any fixed period there-
3 after, or before July 1, 1947, and (2) agencies composed of
4 representatives of the parties or of organizations of the parties
5 to the disputes determined by them.

6 (b) PERSON AND PARTY.—“Person” includes individu-
7 als, partnerships, corporations, associations, or public or
8 private organizations of any character other than agencies.
9 “Party” includes any person or agency participating, or
10 properly seeking and entitled to participate, in any agency
11 proceeding or in proceedings for judicial review of any agency
12 action.

13 (c) RULE AND RULE MAKING.—“Rule” means the
14 whole or any part of any agency statement of general
15 applicability designated to implement, interpret, or prescribe
16 law or policy or to describe the organization, procedure,
17 or practice requirements of any agency. “Rule making”
18 means agency process for the formulation, amendment, or
19 repeal of a rule.

20 (d) ORDER AND ADJUDICATION.—“Order” means the
21 whole or any part of the final disposition or judgment
22 (whether or not affirmative, negative, or declaratory in
23 form) of any agency, and “adjudication” means its process,
24 in a particular instance other than rule making but including
25 licensing.

1 (e) LICENSE AND LICENSING.—“License” includes the
2 whole or part of any agency permit, certificate, approval,
3 registration, charter, membership, or other form of permis-
4 sion. “Licensing” means agency process respecting the
5 grant, renewal, denial, revocation, suspension, annulment,
6 withdrawal, limitation, or conditioning of a license.

7 (f) SANCTION AND RELIEF.—“Sanction” includes, in
8 whole or part by an agency, any (1) prohibition, require-
9 ment, limitation, or other condition upon or deprivation of
10 the freedom of any person, (2) withholding of relief, (3)
11 imposition of any form of penalty or fine, (4) destruction,
12 taking, seizure, or withholding of property, (5) assessment
13 of damages, reimbursement, restitution, compensation, costs,
14 charges, or fees, or (6) requirement of a license or other
15 compulsory or restrictive act. “Relief” includes, in whole or
16 part by an agency, any (1) grant of money, assistance,
17 authority, exemption, privilege, or remedy, (2) recognition
18 of any claim, right, or exception, or (3) taking of other
19 action beneficial to any person.

20 (g) AGENCY ACTION.—For the purposes of section 10,
21 “agency action” includes the whole or part of every agency
22 rule, order, license, sanction, relief, or the equivalent or denial
23 thereof and including in each case the supporting procedures,
24 findings, conclusions, and reasons required by law.

1 PUBLIC INFORMATION

2 SEC. 3. Except to the extent that there is directly in-
3 volved any military, naval, or diplomatic function of the
4 United States requiring secrecy in the public interest—

5 (a) RULES.—Every agency shall separately state and
6 currently publish (1) descriptions of its internal and field
7 organization, (2) a statement of the general course and
8 method by which each type of matter directly affecting
9 any person or party is channeled and determined, including
10 the nature and requirements of all formal or informal pro-
11 cedures available as well as forms and instructions as to
12 the scope and contents of all papers, reports, or examina-
13 tions, and (3) substantive regulations adopted as authorized
14 by law and statements of general policy or interpretations
15 framed by the agency. No person shall in any manner be
16 held liable or prejudiced for compliance with such rules or
17 for failure to resort to organization or procedure not so
18 published.

19 (b) RULINGS AND ORDERS.—Every agency shall pub-
20 lish or make available to public inspection all generally
21 applicable rulings on questions of law and all final opinions
22 or orders in the adjudication of cases except to the extent
23 (1) not utilized as precedents and required by published
24 rule for good cause to be held confidential or (2) relating to
25 the internal management of the agency and not directly

1 affecting public substantive or procedural privileges, rights,
2 or duties.

3 RULE MAKING

4 SEC. 4. Except to the extent that there is directly in-
5 volved any military, naval, or diplomatic function of the
6 United States—

7 (a) NOTICE.—General notice of proposed substantive
8 rule making shall be published, including (1) a statement
9 of the time, place, and nature of public rule-making pro-
10 ceedings, (2) reference to the authority under which the
11 rule is proposed, and (3) either the terms or substance
12 of the proposed rule or a description of the subjects and
13 issues involved. Except in cases in which rules are not re-
14 quired by statute to be made after opportunity for agency
15 hearing, this subsection shall not apply to interpretative
16 rules, general statements of policy, rules of agency organiza-
17 tion, procedure, or practice, or in any situation in which the
18 agency, for good cause finds notice and public procedure
19 thereon impracticable because of unavoidable lack of time or
20 other emergency.

21 (b) PROCEDURES.—After notice required by this sec-
22 tion, the agency shall afford interested parties an opportunity
23 to participate in the rule making through submission of
24 written data, views, or argument with or without oppor-
25 tunity to present the same orally in any manner. After

1 consideration of all relevant matter presented the agency
2 shall, upon adoption or rejection of proposals, publish its
3 reasons and conclusions. To the extent that rules are re-
4 quired by law to be made upon the record of an agency
5 hearing, or after opportunity therefor, the requirements of
6 sections 7 and 8 shall apply in place of the prior provisions
7 of this subsection.

8 (c) PETITIONS.—To the extent that an agency is au-
9 thorized to issue rules it shall accord any interested person
10 the right to petition for the issuance, amendment, or rescis-
11 sion of a rule.

12 ADJUDICATION

13 SEC. 5. In every case of adjudication required by statute
14 to be determined after opportunity for an agency hearing,
15 except to the extent that there is directly involved any
16 matter subject to a subsequent trial of the law and the
17 facts de novo in any court—

18 (a) NOTICE.—Persons entitled to notice shall be in-
19 formed of (1) the time, place, and nature of agency pro-
20 ceedings, (2) the legal authority and jurisdiction under
21 which the proposed proceedings are to be had, and (3)
22 the matters of fact and law in issue. In instances in which
23 private persons are the moving parties, other parties to the
24 proceeding shall give prompt notice of issues controverted
25 in fact or law.

1 (b) PROCEDURE.—The agency shall afford all interested
2 parties opportunity for the settlement or adjudication of
3 relevant issues through (1) the submission and consid-
4 eration of facts, argument, offers of settlement, or pro-
5 posals of adjustment and (2), to the extent that the par-
6 ties are unable to so determine any controversy by con-
7 sent, hearing and decision upon notice and in conformity
8 with sections 7 and 8. The same officers who preside at
9 the reception of evidence pursuant to section 7 shall make
10 the recommended decision or initial decision pursuant to
11 section 8 except in determining applications for licenses or
12 where such officers become unavailable to the agency.

13 (c) SEPARATION OF FUNCTIONS.—No officer, em-
14 ployee, or agent engaged in the performance of investigative
15 or prosecuting functions for any agency shall participate or
16 advise in the decision, recommended decision, or agency
17 review pursuant to section 8 except as witness or counsel
18 in public proceedings. This subsection shall not prevent the
19 agency from supervising the issuance of process or similar
20 papers or from appearing thereon as a party.

21 (d) DECLARATORY ORDERS.—The agency is authorized,
22 with like effect as in the case of other orders, to issue a
23 declaratory order to terminate a controversy or remove
24 uncertainty.

ANCILLARY MATTERS

2 SEC. 6. In connection with any proceedings or author-
3 ity—

(a) APPEARANCE.—Every interested person shall be accorded the right to appear in person or by counsel or other qualified representative before any agency or its responsible officers or employees to secure information or for the prompt negotiation, adjustment, or determination of any issue, request, or controversy. Every person appearing or summoned in any agency proceeding shall be freely accorded the right to be accompanied and advised by counsel. In fixing the times and places for proceedings, regard shall be had for the convenience and necessity of the parties or their representatives.

(b) INVESTIGATIONS.—No process, requirement of a report, demand for inspection, or other investigative act or demand shall be enforceable in any manner or for any purpose except (1) as expressly authorized by law, (2) within the jurisdiction of the agency, (3) without denying rights of personal privilege or privacy, and (4) in furtherance of requirements of law enforcement. Every person required to submit data or evidence shall be entitled to retain or procure a copy or transcript thereof.

(c) SUBPENAS.—Subpenas authorized by law shall be issued to any party upon request and, as may be required by

1 rules of procedure, upon a statement or showing of general
2 relevance, necessity, or reasonable scope of the evidence
3 sought. Upon any contest of the validity of a subpoena or
4 similar process or demand, the court shall determine all
5 relevant questions of law raised by the parties, including
6 the authority or jurisdiction of the agency, and in any pro-
7 ceeding for enforcement shall enforce (by the issuance of
8 an order requiring the production of the evidence or data
9 under penalty of punishment for contempt in case of con-
10 tumacious failure to do so) or refuse to enforce such subpoena
11 accordingly.

12 (d) DENIALS.—Prompt notice shall be given of the
13 denial in whole or part of any application, petition, or other
14 request of any person. Such notice shall be accompanied by
15 a reference to any further agency procedure available to
16 such person and, except to the extent affirming prior denial,
17 a simple statement of grounds.

18 (e) EFFECTIVE DATES.—The required publication or
19 service of any substantive and effective rule (other than
20 one granting exemption or relieving restriction) or final
21 and affirmative order (except the grant or renewal of a
22 license) shall precede for not less than thirty days the
23 effective date thereof except as otherwise authorized by
24 law and provided by the agency upon good cause found.

1 (f) PUBLIC RECORDS.—Matters of official record shall
2 be available to interested persons except personal data, in-
3 formation required by law to be held confidential, or, for
4 good cause found and upon published rule, other specified
5 classes of information.

6 HEARINGS

7 SEC. 7. In a hearing pursuant to sections 4 or 5—

8 (a) PRESIDING OFFICERS.—There shall preside at the
9 taking of evidence (1) the agency or (2) one or more
10 subordinate hearing officers designated from members of
11 the body which comprises the agency, State representatives
12 as authorized by statute, or examiners appointed as pro-
13 vided in this Act.

14 The functions of all presiding officers and of officers par-
15 ticipating in decisions in conformity with section 8 shall be
16 conducted in an impartial manner. Except to the extent
17 required for the disposition of ex parte matters as authorized
18 by law, no such officer shall consult or receive evidence or
19 argument from or on behalf of any person or party except
20 upon notice and opportunity for all parties to participate.
21 Upon the filing in good faith of a timely and sufficient affi-
22 davit of personal bias, disqualification, or conduct contrary
23 to law of any such officer, the agency or another such officer
24 shall after hearing determine the matter as a part of the
25 record and decision in the case.

1 Subject to the civil-service and other laws not inconsist-
2 ent with this Act there shall be appointed for each agency
3 as many qualified and competent examiners as may be
4 necessary for the hearing or decision of cases, who shall
5 perform no other duties, be removable only for good cause
6 after hearing, and receive a fixed salary not subject to
7 change except that the Civil Service Commission shall
8 generally survey and adjust examiners' salaries in order
9 to assure adequacy and uniformity in accordance with the
10 nature and importance of the duties performed. Agencies
11 occasionally or temporarily insufficiently staffed may utilize
12 examiners selected from other agencies by the Civil Service
13 Commission.

14 (b) HEARING POWERS.—Officers presiding at hearings
15 shall have power, in accordance with the published rules
16 of the agency and within its powers, to (1) administer
17 oaths and affirmations, (2) issue subpoenas authorized by
18 law, (3) rule upon offers of proof and receive relevant
19 evidence, (4) take or cause depositions to be taken when-
20 ever the ends of justice would be served thereby, (5)
21 regulate the course of the hearing, (6) hold conferences
22 for the settlement or simplification of the issues by consent
23 of the parties, (7) dispose of procedural requests or similar
24 matters, and (8) make decisions or recommended deci-
25 sions in conformity with section 8.

1 (c) EVIDENCE.—The proponent of a rule or order
2 shall have the burden of proceeding except as statutes
3 otherwise provide. The conduct of every person or status
4 of any enterprise shall be presumed lawful until the
5 contrary shall have been shown. Every party shall have
6 the right of reasonable cross-examination and to submit
7 rebuttal evidence except that in rule making or determin-
8 ing applications for licenses any agency may, where the
9 interest of any party will not be prejudiced thereby,
10 adopt procedures for the submission of written evidence
11 subject to opportunity for such cross-examination and re-
12 buttal. Any evidence may be received, but no sanction
13 shall be imposed or rule or order be issued except as sup-
14 ported by relevant, reliable, and probative evidence.

15 (d) RECORD.—The transcript of testimony and exhibits,
16 together with all papers and requests relating to the hearing
17 or issues, shall constitute the exclusive record for decision
18 in accordance with section 8 and be made available to the
19 parties. The taking of official notice as to facts beyond the
20 record shall be unlawful unless the parties shall both be
21 notified of the facts so noticed and accorded an opportunity
22 to show the contrary.

23

DECISIONS

24 SEC. 8. In cases in which a hearing is required to be
25 conducted in conformity with section 7—

1 (a) ACTION BY SUBORDINATES.—In cases in which the
2 agency has not presided at the reception of the evidence,
3 an officer or officers qualified to preside at hearings pursu-
4 ant to section 7 shall either initially decide the case or the
5 agency shall require the entire record certified to it for
6 initial decision. Whenever such officers make the initial
7 decision and in the absence of either an appeal to the agency
8 or review upon motion of the agency within time provided
9 by rule, such decision shall without further proceedings then
10 become the decision of the agency. Whenever the agency
11 makes the initial decision without having presided at the
12 reception of the evidence, such officers shall first recommend
13 a decision. Subordinate officers recommending decisions or
14 making initial decisions shall first receive and consider
15 written and oral arguments submitted by the parties.

16 (b) SUBMITTALS AND DECISIONS.—Prior to each
17 recommended decision, initial decision, or decision upon
18 agency review of the decision of subordinate officers the
19 parties shall be afforded an opportunity for the submission of,
20 and the officers participating in such decisions shall consider,
21 (1) proposed findings and conclusions, (2) exceptions to
22 decisions or recommended decisions of subordinate officers,
23 and (3) supporting reasons for such exceptions or proposed
24 findings or conclusions. All decisions and recommended
25 decisions shall be a part of the record, stated in writing,

1 served upon the parties, and include a statement of (1)
2 findings of fact, conclusions of law, and reasons therefor upon
3 all relevant issues of fact, law, or agency discretion pre-
4 sented and (2) the appropriate rule, order, sanction, relief,
5 or denial thereof supported by such findings, conclusions,
6 and reasons.

7 SANCTIONS AND POWERS

8 SEC. 9. In the exercise of any power or authority—

9 (a) IN GENERAL.—No sanction shall be imposed or
10 substantive rule or order be issued except within jurisdic-
11 tion delegated to the agency by law and as specified and
12 authorized by statute.

13 (b) LICENSES.—In any case, except financial reorgani-
14 zations, in which a license is required by law and application
15 is made therefor such license shall be deemed granted un-
16 less the agency shall within not more than sixty days of
17 such application have made its decision or set the matter
18 for proceedings required to be conducted pursuant to
19 sections 7 and 8 of this Act or for other proceedings re-
20 quired by law. Except in cases of clearly demonstrated
21 willfulness or those in which public health, morals, or
22 safety manifestly require otherwise, no withdrawal, suspen-
23 sion, revocation, or annulment of any license shall be lawful
24 unless, prior to the institution of agency proceedings there-
25 for, facts or conduct which may warrant such action shall

1 have been called to the attention of the licensee by the
2 agency in writing and such person shall have been accorded
3 opportunity to demonstrate or achieve compliance with all
4 lawful requirements. In any case in which the holder
5 thereof has made timely application for a renewal or a new
6 license, no license with reference to any activity of a con-
7 tinuing nature shall expire until such application shall have
8 been finally determined by the agency.

9 (c) PUBLICITY.—Except as provided by law, no agency
10 publicity reflecting adversely upon any person or en-
11 terprise shall be issued other than the public release or
12 availability of texts of authorized documents or statements
13 of the positions of the parties to a controversy.

14 JUDICIAL REVIEW

15 SEC. 10. Except (1) so far as statutes expressly preclude
16 judicial review, (2) in proceedings for judicial review in
17 any legislative court, or (3) to the extent that agency
18 action is by law committed to agency discretions—

19 (a) RIGHT OF REVIEW.—Any person adversely affected
20 by any agency action shall be entitled to judicial review
21 thereof in accordance with this section.

22 (b) FORM AND VENUE OF ACTION.—The form of pro-
23 ceeding for judicial review shall be any special statutory
24 review proceeding relevant to the subject matter in any
25 court specified by statute or, in the absence or inadequacy

1 thereof, any applicable form of legal action (including
2 actions for declaratory judgments or writs of injunction
3 or habeas corpus) in any court of competent jurisdiction.
4 Any party adversely affected or threatened to be so affected
5 may, through declaratory judgment procedure after resort
6 to any adequate agency relief provided by rule or statute,
7 secure a judicial declaration of rights respecting the validity
8 or application of any agency action. Agency action shall
9 be subject to judicial review in civil or criminal proceed-
10 ings for judicial enforcement except to the extent that prior,
11 adequate, and exclusive opportunity for such review is pro-
12 vided by statute.

13 (c) REVIEWABLE ACTS.—Every final agency action,
14 or agency action for which there is no other adequate remedy
15 in any court, shall be subject to judicial review. Any
16 preliminary, procedural, or intermediate agency action or
17 ruling not directly reviewable shall be subject to review upon
18 the review of the final agency action. Any agency action
19 shall be final for the purposes of this section notwithstanding
20 that no petition for review, rehearing, reconsideration, re-
21 opening, or declaratory order has been presented to or deter-
22 mined by the agency.

23 (d) INTERIM RELIEF.—Pending judicial review any
24 agency is authorized, where it finds that justice so requires,
25 to postpone the effective date of any action taken by it.

1 Upon such conditions as may be required and to the extent
2 necessary to preserve status or rights, afford an oppor-
3 tunity for judicial review of any question of law or prevent
4 irreparable injury, every reviewing court and every court to
5 which a case may be taken on appeal from or upon appli-
6 cation for certiorari or other writ to a reviewing court is
7 authorized to issue all necessary and appropriate process to
8 postpone the effective date of any agency action or tem-
9 porarily grant or extend relief denied or withheld.

10 (e) SCOPE OF REVIEW. So far as necessary to decision
11 and where presented the reviewing court shall decide all
12 relevant questions of law, interpret constitutional and stat-
13 utory provisions, and determine the meaning or applica-
14 bility of the terms of any agency action. It shall (A) direct
15 or compel agency action unlawfully withheld or unreason-
16 ably delayed and (B) hold unlawful and set aside agency
17 action found (1) arbitrary, capricious, or otherwise not in
18 accordance with law, (2) contrary to constitutional right,
19 power, privilege, or immunity, (3) in excess of statutory
20 jurisdiction, authority, or limitations, or short of statutory
21 right, (4) without due observance of procedure required by
22 law, (5) unsupported by competent, material, and substan-
23 tial evidence upon the whole agency record as reviewed by
24 the court in any case subject to the requirements of sections
25 7 and 8, or (6) unwarranted by the facts to the extent that

1 the facts in any case are subject to trial de novo by the re-
2 viewing court. The relevant facts shall be tried and deter-
3 mined de novo by the original court of review in all cases in
4 which adjudications are not required by statute to be made
5 upon agency hearing.

6 CONSTRUCTION AND EFFECT

7 SEC. 11. Nothing in this Act shall be held to diminish
8 the constitutional rights of any person or to limit or repeal
9 additional requirements imposed by statute or otherwise rec-
10 ognized by law. Except as otherwise required by law, all
11 requirements or privileges relating to evidence or procedure
12 shall apply equally to any agency or person. If any provi-
13 sion of this Act or the application thereof is held invalid, the
14 remainder of this Act or other applications of such provision
15 shall not be affected. Every agency is granted all authority
16 necessary to comply with the requirements of this Act. No
17 subsequent legislation shall be held to supersede or modify
18 the provisions of this Act unless such legislation shall do so
19 expressly and by reference to the provisions of this Act so
20 affected. This Act shall take effect three months after its
21 approval except that sections 7 and 8 shall take effect six
22 months after such approval, the requirement of the selec-
23 tion of examiners through civil service shall not become ef-
24 fective until one year after the termination of present hos-

1 tilities, and no procedural requirement shall be mandatory
2 as to any agency proceeding initiated prior to the effective
3 date of such requirement.

A BILL

To improve the administration of justice by
prescribing fair administrative procedure.

By Mr. McCARRAN

JANUARY 6, 1945

Read twice and referred to the Committee on the
Judiciary

79TH CONGRESS
1ST SESSION

H. R. 1203

H. R. 1203

IN THE HOUSE OF REPRESENTATIVES

JANUARY 8, 1945

Mr. SUMNERS of Texas introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To improve the administration of justice by prescribing fair administrative procedure.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the “Administrative Procedure
4 Act”.

5 DEFINITIONS

6 SEC. 2. As used in this Act—

(a) AGENCY.—“Agency” means each authority of the Government of the United States other than Congress, the courts, or the governments of the possessions, Territories, or the District of Columbia. Except as to the requirements of section 3, there shall be excluded from the operation

1 of this Act (1) functions which by law expire on the
2 termination of present hostilities, within any fixed period
3 thereafter, or before July 1, 1947, and (2) agencies com-
4 posed of representatives of the parties or of organizations
5 of the parties to the disputes determined by them.

6 (b) PERSON AND PARTY.—“Person” includes individ-
7 uals, partnerships, corporations, associations, or public or
8 private organizations of any character other than agencies.
9 “Party” includes any person or agency participating, or
10 properly seeking and entitled to participate, in any agency
11 proceeding or in proceedings for judicial review of any
12 agency action.

13 (c) RULE AND RULE MAKING.—“Rule” means the
14 whole or any part of any agency statement of general ap-
15 plicability designed to implement, interpret, or prescribe
16 law or policy or to describe the organization, procedure,
17 or practice requirements of any agency. “Rule making”
18 means agency process for the formulation, amendment, or
19 repeal of a rule.

20 (d) ORDER AND ADJUDICATION.—“Order” means the
21 whole or any part of the final disposition or judgment
22 (whether or not affirmative, negative, or declaratory in
23 form) of any agency, and “adjudication” means its proc-
24 ess, in a particular instance other than rule making but
25 including licensing.

1 (c) LICENSE AND LICENSING.—“License” includes the
2 whole or part of any agency permit, certificate, approval,
3 registration, charter, membership, or other form of permis-
4 sion. “Licensing” means agency process respecting the
5 grant, renewal, denial, revocation, suspension, annulment,
6 withdrawal, limitation, or conditioning of a license.

7 (f) SANCTION AND RELIEF.—“Sanction” includes, in
8 whole or part by an agency, any (1) prohibition, require-
9 ment, limitation, or other condition upon or deprivation of
10 the freedom of any person; (2) withholding of relief; (3)
11 imposition of any form of penalty or fine; (4) destruction,
12 taking, seizure, or withholding of property; (5) assess-
13 ment of damages, reimbursement, restitution, compensation,
14 costs, charges, or fees; or (6) requirement of a license or
15 other compulsory or restrictive act. “Relief” includes, in
16 whole or part by an agency, any (1) grant of money,
17 assistance, authority, exemption, privilege, or remedy; (2)
18 recognition of any claim, right, or exception; or (3) taking
19 of other action beneficial to any person.

20 (g) AGENCY ACTION.—For the purposes of section 10,
21 “agency action” includes the whole or part of every agency
22 rule, order, license, sanction, relief, or the equivalent or
23 denial thereof and including in each case the supporting
24 procedures, findings, conclusions, and reasons required by
25 law.

PUBLIC INFORMATION

SEC. 3. Except to the extent that there is directly involved any military, naval, or diplomatic function of the United States requiring secrecy in the public interest—

(a) RULES.—Every agency shall separately state and currently publish (1) descriptions of its internal and field organization; (2) a statement of the general course and method by which each type of matter directly affecting any person or party is channeled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations; and (3) substantive regulations adopted as authorized by law and statements of general policy or interpretations framed by the agency. No person shall in any manner be held liable or prejudiced for compliance with such rules or for failure to resort to organization or procedure not so published.

(b) RULINGS AND ORDERS.—Every agency shall publish or make available to public inspection all generally applicable rulings on questions of law and all final opinions or orders in the adjudication of cases except to the extent (1) not utilized as precedents and required by published rule for good cause to be held confidential or (2) relating to the

1 internal management of the agency and not directly affecting
2 public substantive or procedural privileges, rights, or duties.

3 RULE MAKING

4 SEC. 4. Except to the extent that there is directly in-
5 volved any military, naval, or diplomatic function of the
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9 of the time, place, and nature of public rule making pro-
10 ceedings; (2) reference to the authority under which the
11 rule is proposed; and (3) either the terms or substance
12 of the proposed rule or a description of the subjects and
13 issues involved. Except in cases in which rules are not re-
14 quired by statute to be made after opportunity for agency
15 hearing, this subsection shall not apply to interpretative
16 rules, general statements of policy, rules of agency organi-
17 zation, procedure, or practice, or in any situation in which
18 the agency for good cause finds notice and public procedure
19 thereon impracticable because of unavoidable lack of time
20 or other emergency.

21 (b) PROCEDURES.—After notice required by this section,
22 the agency shall afford interested parties an opportunity to
23 participate in the rule making through submission of written
24 data, views, or argument with or without opportunity to

1 present the same orally in any manner. After consideration
2 of all relevant matter presented the agency shall, upon adop-
3 tion or rejection of proposals, publish its reasons and con-
4 clusions. To the extent that rules are required by law to be
5 made upon the record of an agency hearing, or after oppor-
6 tunity therefor, the requirements of sections 7 and 8 shall
7 apply in place of the prior provisions of this subsection.

8 (c) PETITIONS.—To the extent that an agency is author-
9 ized to issue rules it shall accord any interested person the
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11 a rule.

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13 SEC. 5. In every case of adjudication required by statute
14 to be determined after opportunity for an agency hearing,
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19 formed of (1) the time, place, and nature of agency pro-
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21 which the proposed proceedings are to be had; and (3)
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23 private persons are the moving parties, other parties to the
24 proceeding shall give prompt notice of issues controverted in
25 fact or law.

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2 ested parties opportunity for the settlement or adjudication
3 of relevant issues through (1) the submission and con-
4 sideration of facts, argument, offers of settlement, or pro-
5 posals of adjustments and (2) to the extent that the parties
6 are unable to so determine any controversy by consent,
7 hearing, and decision upon notice and in conformity with
8 sections 7 and 8. The same officers who preside at the
9 reception of evidence pursuant to section 7 shall make the
10 recommended decision or initial decision pursuant to section
11 8, except in determining applications for licenses or where
12 such officers become unavailable to the agency.

13 (c) SEPARATION OF FUNCTIONS.—No officer, em-
14 ployee, or agent engaged in the performance of investiga-
15 tive or prosecuting functions for any agency shall participate
16 or advise in the decision, recommended decision, or agency
17 review pursuant to section 8 except as witness or counsel in
18 public proceedings. This subsection shall not prevent the
19 agency from supervising the issuance of process or similar
20 papers or from appearing thereon as a party.

21 (d) DECLARATORY ORDERS.—The agency is authorized,
22 with like effect as in the case of other orders, to issue a de-
23 claratory order to terminate a controversy or remove un-
24 certainty.

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8 negotiation, adjustment, or determination of any issue, re-
9 quest, or controversy. Every person appearing or sum-
10 moned in any agency proceeding shall be freely accorded
11 the right to be accompanied and advised by counsel. In
12 fixing the times and places for proceedings, regard shall be
13 had for the convenience and necessity of the parties or their
14 representatives.

15 (b) INVESTIGATIONS.—No process, requirement of a
16 report, demand for inspection, or other investigative act or
17 demand shall be enforceable in any manner or for any pur-
18 pose except (1) as expressly authorized by law, (2) within
19 the jurisdiction of the agency, (3) without denying rights
20 of personal privilege or privacy, and (4) in furtherance of
21 requirements of law enforcement. Every person required to
22 submit data or evidence shall be entitled to retain or procure
23 a copy or transcript thereof.

24 (c) SUBPENAS.—Subpenas authorized by law shall be
25 issued to any party upon request and, as may be required

1 by rules of procedure, upon a statement or showing of
2 general relevance, necessity, or reasonable scope of the evi-
3 dence sought. Upon any contest of the validity of a subpoena
4 or similar process or demand, the court shall determine all
5 relevant questions of law raised by the parties, including the
6 authority or jurisdiction of the agency, and in any proceeding
7 for enforcement shall enforce (by the issuance of an order
8 requiring the production of the evidence or data under penalty
9 of punishment for contempt in case of contumacious failure
10 to do so) or refuse to enforce such subpoena accordingly.

11 (d) DENIALS.—Prompt notice shall be given of the
12 denial in whole or part of any application, petition, or other
13 request of any person. Such notice shall be accompanied by
14 a reference to any further agency procedure available to such
15 person and, except to the extent affirming prior denial, a
16 simple statement of grounds.

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18 service of any substantive and effective rule (other than one
19 granting exemption or relieving restriction) or final and
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22 thereof except as otherwise authorized by law and provided
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24 (f) PUBLIC RECORDS.—Matters of official record shall

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4 classes of information.

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6 SEC. 7. In a hearing pursuant to sections 4 or 5—

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11 authorized by statute, or examiners appointed as provided
12 in this Act.

13 The functions of all presiding officers and of officers par-
14 ticipating in decisions in conformity with section 8 shall be
15 conducted in an impartial manner. Except to the extent
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17 by law, no such officer shall consult or receive evidence or
18 argument from or on behalf of any person or party except
19 upon notice and opportunity for all parties to participate.
20 Upon the filing in good faith of a timely and sufficient affi-
21 davit of personal bias, disqualification, or conduct contrary
22 to law of any such officer, the agency or another such officer
23 shall after hearing determine the matter as a part of the
24 record and decision in the case.

25 Subject to the civil-service and other laws not incon-

1 sistent with this Act there shall be appointed for each agency
2 as many qualified and competent examiners as may be nec-
3 essary for the hearing or decision of cases, who shall perform
4 no other duties, be removable only for good cause after hear-
5 ing, and receive a fixed salary not subject to change except
6 that the Civil Service Commission shall generally survey and
7 adjust examiners' salaries in order to assure adequacy and
8 uniformity in accordance with the nature and importance of
9 the duties performed. Agencies occasionally or temporarily
10 insufficiently staffed may utilize examiners selected from other
11 agencies by the Civil Service Commission.

12 (b) HEARING POWERS.—Officers presiding at hearings
13 shall have power, in accordance with the published rules of
14 the agency and within its powers, to (1) administer oaths
15 and affirmations, (2) issue subpoenas authorized by law, (3)
16 rule upon offers of proof and receive relevant evidence, (4)
17 take or cause depositions to be taken whenever the ends of
18 justice would be served thereby, (5) regulate the course of
19 the hearing, (6) hold conferences for the settlement or sim-
20 plification of the issues by consent of the parties, (7) dis-
21 pose of procedural requests or similar matters, and (8) make
22 decisions or recommended decisions in conformity with sec-
23 tion 8.

24 (c) EVIDENCE.—The proponent of a rule or order shall
25 have the burden of proceeding except as statutes otherwise

1 provide. The conduct of every person or status of any
 2 enterprise shall be presumed lawful until the contrary shall
 3 have been shown. Every party shall have the right of
 4 reasonable cross-examination and to submit rebuttal evidence
 5 except that in rule making or determining applications for
 6 licenses any agency may, where the interest of any party
 7 will not be prejudiced thereby, adopt procedures for the
 8 submission of written evidence subject to opportunity for
 9 such cross-examination and rebuttal. Any evidence may be
 10 received, but no sanction shall be imposed or rule or order
 11 be issued except as supported by relevant, reliable, and pro-
 12 bative evidence.

13 (d) RECORD.—The transcript of testimony and exhibits,
 14 together with all papers and requests relating to the hear-
 15 ing or issues, shall constitute the exclusive record for deci-
 16 sion in accordance with section 8 and be made available
 17 to the parties. The taking of official notice as to facts be-
 18 yond the record shall be unlawful unless the parties shall
 19 both be notified of the facts so noticed and accorded an op-
 20 portunity to show the contrary.

21 DECISIONS

22 SEC. 8. In cases in which a hearing is required to be
 23 conducted in conformity with section 7—

24 (a) ACTION BY SUBORDINATES.—In cases in which
 25 the agency has not presided at the reception of the evidence,

1 an officer or officers qualified to preside at hearings pursu-
2 ant to section 7 shall either initially decide the case or the
3 agency shall require the entire record certified to it for
4 initial decision. Whenever such officers make the initial
5 decision and in the absence of either an appeal to the agency
6 or review upon motion of the agency within time provided
7 by rule, such decision shall without further proceedings
8 then become the decision of the agency. Whenever the
9 agency makes the initial decision without having presided
10 at the reception of the evidence, such officers shall first
11 recommend a decision. Subordinate officers recommending
12 decisions or making initial decisions shall first receive and
13 consider written and oral arguments submitted by the parties.

14 (b) SUBMITTALS AND DECISIONS.—Prior to each rec-
15 ommended decision, initial decision, or decision upon agency
16 review of the decision of subordinate officers the parties
17 shall be afforded an opportunity for the submission of, and
18 the officers participating in such decisions shall consider,
19 (1) proposed findings and conclusions, (2) exceptions to
20 decisions or recommended decisions of subordinate officers,
21 and (3) supporting reasons for such exceptions or pro-
22 posed findings or conclusions. All decisions and recom-
23 mended decisions shall be a part of the record, stated in
24 writing, served upon the parties, and include a statement of
25 (1) findings of fact, conclusions of law, and reasons there-

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1 strate or achieve compliance with all lawful requirements.
2 In any case in which the holder thereof has made timely
3 application for a renewal or a new license, no license with
4 reference to any activity of a continuing nature shall expire
5 until such application shall have been finally determined by
6 the agency.

7 (c) PUBLICITY.—Except as provided by law, no agency
8 publicity reflecting adversely upon any person or enterprise
9 shall be issued other than the public release or availability
10 of texts of authorized documents or statements of the posi-
11 tions of the parties to a controversy.

12 JUDICIAL REVIEW

13 SEC. 10. Except (1) so far as statutes expressly pre-
14 clude judicial review, (2) in proceedings for judicial review
15 in any legislative court, or (3) to the extent that agency
16 action is by law committed to agency discretion—

17 (a) RIGHT OF REVIEW.—Any person adversely affected
18 by any agency action shall be entitled to judicial review
19 thereof in accordance with this section.

20 (b) FORM AND VENUE OF ACTION.—The form of pro-
21 ceeding for judicial review shall be any special statutory
22 review proceeding relevant to the subject matter in any
23 court specified by statute or, in the absence or inadequacy
24 thereof, any applicable form of legal action (including actions
25 for declaratory judgments or writs of injunction or habeas

1 corpus) in any court of competent jurisdiction. Any party
2 adversely affected or threatened to be so affected may,
3 through declaratory judgment procedure after resort to any
4 adequate agency relief provided by rule or statute, secure a
5 judicial declaration of rights respecting the validity or appli-
6 cation of any agency action. Agency action shall be subject
7 to judicial review in civil or criminal proceedings for judicial
8 enforcement except to the extent that prior, adequate, and
9 exclusive opportunity for such review is provided by statute.

10 (c) REVIEWABLE ACTS.—Every final agency action, or
11 agency action for which there is no other adequate remedy
12 in any court, shall be subject to judicial review. Any pre-
13 liminary, procedural, or intermediate agency action or ruling
14 not directly reviewable shall be subject to review upon the
15 review of the final agency action. Any agency action shall
16 be final for the purposes of this section notwithstanding that
17 no petition for review, rehearing, reconsideration, reopening,
18 or declaratory order has been presented to or determined
19 by the agency.

20 (d) INTERIM RELIEF.—Pending judicial review any
21 agency is authorized, where it finds that justice so requires,
22 to postpone the effective date of any action taken by it.
23 Upon such conditions as may be required and to the extent
24 necessary to preserve status or rights, afford an opportunity
25 for judicial review of any question of law or prevent irrep-

1 arable injury, every reviewing court and every court to
2 which a case may be taken on appeal from or upon applica-
3 tion for certiorari or other writ to a reviewing court is author-
4 ized to issue all necessary and appropriate process to post-
5 pone the effective date of any agency action or temporarily
6 grant or extend relief denied or withheld.

7 (e) SCOPE OF REVIEW.—So far as necessary to decision
8 and where presented the reviewing court shall decide all
9 relevant questions of law, interpret constitutional and stat-
10 utory provisions, and determine the meaning or applicability
11 of the terms of any agency action. It shall (A) direct or
12 compel agency action unlawfully withheld or unreasonably
13 delayed and (B) hold unlawful and set aside agency action
14 found (1) arbitrary, capricious, or otherwise not in accord-
15 ance with law; (2) contrary to constitutional right, power,
16 privilege, or immunity; (3) in excess of statutory jurisdiction,
17 authority, or limitations, or short of statutory right; (4)
18 without due observance of procedure required by law; (5)
19 unsupported by competent, material, and substantial evi-
20 dence upon the whole agency record as reviewed by the
21 court in any case subject to the requirements of sections 7 and
22 8; or (6) unwarranted by the facts to the extent that the
23 facts in any case are subject to trial de novo by the review-
24 ing court. The relevant facts shall be tried and determined
25 de novo by the original court of review in all cases in which

1 adjudications are not required by statute to be made upon
2 agency hearing.

3 CONSTRUCTION AND EFFECT

4 SEC. 11. Nothing in this Act shall be held to diminish
5 the constitutional rights of any person or to limit or repeal
6 additional requirements imposed by statute or otherwise
7 recognized by law. Except as otherwise required by law,
8 all requirements or privileges relating to evidence or procedure
9 shall apply equally to any agency or person. If any provision
10 of this Act or the application thereof is held invalid, the
11 remainder of this Act or other applications of such provision
12 shall not be affected. Every agency is granted all authority
13 necessary to comply with the requirements of this Act. No
14 subsequent legislation shall be held to supersede or modify
15 the provisions of this Act unless such legislation shall do so
16 expressly and by reference to the provisions of this Act so
17 affected. This Act shall take effect three months after its
18 approval except that sections 7 and 8 shall take effect six
19 months after such approval, the requirement of the selection
20 of examiners through civil service shall not become effective
21 until one year after the termination of present hostilities,
22 and no procedural requirement shall be mandatory as to any
23 agency proceeding initiated prior to the effective date of
24 such requirement.

A BILL

To improve the administration of justice by
prescribing fair administrative procedure.

By Mr. SUMNERS of Texas

JANUARY 8, 1945

Referred to the Committee on the Judiciary

79TH CONGRESS
1ST SESSION

H. R. 1206

IN THE HOUSE OF REPRESENTATIVES

JANUARY 8, 1945

Mr. WALTER introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To prescribe fair standards of administrative procedure, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act, divided into titles and sections according to
4 the following table of contents, may be cited as the "Admin-
5 istrative Procedure Act".

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1 TITLE I—GENERAL PROVISIONS

2 SEC. 101. DECLARATION OF GENERAL POLICY.—The
3 exercise of all powers of government through administrative

1 officers and agencies, so far as such exercise affects rights
2 or withholds or confers benefits or privileges, shall be conducted
3 according to established and published procedures and prac-
4 tices which shall assure the adequate protection of such
5 rights, the impartial conferring of authorized benefits or
6 privileges, and the effectuation of the declared policies of
7 Congress, and shall be adapted to the reasonable necessities
8 and differences of legislation and subject matter involved.

9 SEC. 102. DEFINITIONS.—Except as otherwise ex-
10 pressly stated or required by the context—

11 (a) “Agency” means each office, board, commission,
12 independent establishment, authority, corporation, depart-
13 ment, bureau, division, or other subdivision or unit of the
14 executive branch of the Federal Government, and means the
15 highest or ultimate authority therein.

16 (b) “Persons” means individuals or organized groups
17 of any character, including partnerships, and other forms of
18 agricultural, labor, business, commercial, or industrial organi-
19 zation or association, as well as Federal, State, or local agen-
20 cies, subdivisions, municipal corporations, or officers.

21 (c) “Rules” means rules, regulations, standards, state-
22 ments of policy, and all other types of statements issued by
23 any agency, of general application and designed to imple-
24 ment, interpret, or make specific the legislation administered

1 by, and the organization and procedure of, any agency; and
2 includes rate making, price fixing, or the fixing of standards.

3 (d) "Adjudication" means the final disposition by any
4 agency of particular cases (without distinction between
5 licensing and other forms of proceeding).

6 (e) "Publication", whenever required by this Act and
7 unless otherwise provided, means publication in the Federal
8 Register, except that agencies may adopt such other and
9 additional means of publication as they may deem appro-
10 priate and advisable.

11 SEC. 103. DELEGATION AND DECENTRALIZATION OF
12 AUTHORITY WITHIN AGENCIES.—For the expedition and
13 sound disposition of business, agencies may delegate author-
14 ity in the following respects and subject to the following con-
15 ditions, except that each agency shall in every case be
16 responsible for all acts done pursuant to such delegated
17 authority:

18 (a) CERTAIN TYPES OF DUTIES.—Subject to its own
19 supervision, direction, review, reconsideration, or initial con-
20 sideration in unusually important cases, every agency is
21 authorized to delegate to responsible members, officers, em-
22 ployees, committees, or administrative boards all matters
23 of internal management and routine and the informal dis-
24 position or issuance of requests, complaints, applications, and

1 other moving papers and matters of preliminary, initial,
2 intermediate, or ancillary formal procedures in connection
3 with the making of rules or adjudications.

4 (b) BOARDS AND SINGLE ADMINISTRATORS.—Every
5 agency, the ultimate authority of which is vested in a board
6 or commission, may delegate, subject to review or recon-
7 sideration by the full board or commission, any of its powers
8 or functions to any one or more members of such board or
9 commission, subject in each case to the further provisions of
10 this Act; and where the ultimate authority in any agency
11 is vested in a single individual such individual may (subject
12 to such review or reconsideration as may be provided by
13 rule or law) delegate any powers, duties, or functions to
14 subordinate officers or employees.

15 (c) FIELD OFFICERS.—Decentralization of authority
16 and the establishment of field officers shall be encouraged and
17 fostered where, in the judgment of an agency, there is need
18 therefor or the business of the agency and convenience of
19 parties will be facilitated thereby.

20 (d) PUBLICATION OF ALL DELEGATIONS.—Any such
21 general delegation or decentralization, and attendant review
22 procedures, shall, except as to matters of internal manage-
23 ment and routine, be specifically provided and reflected in
24 the published rules of the agency concerned.

25 SEC. 104. APPEARANCE AND REPRESENTATION OF

1 PARTIES.—Any interested person may appear before any
2 agency or the representatives thereof in person or by duly
3 authorized representatives. When so appearing or repre-
4 sented, all reasonable facilities for negotiation, information,
5 adjustment, or formal or informal determination of issues,
6 questions, problems, or cases shall be afforded all such per-
7 sons or their representatives. Every person appearing or
8 summoned individually in any administrative proceeding shall
9 be freely accorded the right to be accompanied and advised
10 by counsel.

11 SEC. 105. ATTORNEYS AND AGENTS.—In order to sim-
12 plify the requirements for practice before agencies, the fol-
13 lowing and no other powers or requirements may be exercised
14 or prescribed:

15 (a) SUSPENSION OR DEBARMENT.—Whether or not
16 any agency maintains a roll of practitioners, it may, upon
17 hearing and a finding of good cause therefor, preclude any
18 person from practicing before it, subject to judicial review
19 as to the reasonableness, in law or upon the facts, of such
20 suspension or debarment upon any available statutory pro-
21 cedure or, in the absence thereof, upon application for an
22 injunction.

23 (b) ADMISSIONS TO PRACTICE.—Requirements for the
24 admission of attorneys or agents to practice, and the main-
25 tenance of formal registers of attorneys or agents, shall be

1 omitted whenever practicable. The Office of Administrative
2 Procedure may, subject to the conditions of this section,
3 establish and maintain a central method for the registration
4 or admission of attorneys and others to practice before the
5 several agencies.

6 (c) ATTORNEYS.—Where admissions to practice are
7 deemed necessary by any agency, attorneys in good standing
8 admitted to practice in the highest court of any State or
9 Territory, or in any Federal court, shall, upon their written
10 representation to that effect, be admitted to practice before
11 such agency, except that the Patent Office may require of
12 such attorneys such evidence of technical proficiency as may
13 be reasonably necessary.

14 (d) FORMER EMPLOYEES.—Former employees of any
15 agency may, subject to the conditions of this section, practice
16 before such agency after the lapse of two years from the date
17 of termination of their employment by such agency. Prior
18 to the expiration of such period, such former employees,
19 whether attorneys as defined in subsection (c) hereof or
20 not, may be permitted to practice before the agency upon
21 such additional restrictions or conditions as may be deemed
22 necessary by the agency.

23 (e) OTHER PERSONS.—Other persons may be admitted
24 to practice before any agency upon such reasonable regula-
25 tions and requirements as such agency may find necessary.

1 SEC. 106. INVESTIGATIONS.—All investigations shall be
2 conducted in such a manner as to disturb and disrupt per-
3 sonal privacy or private occupation or enterprise in the least
4 degree compatible with adequate law enforcement. Re-
5 quired reports shall be simplified so far as possible. Com-
6 pulsory process or inspections shall not be issued or demanded
7 except when in the judgment of an agency there is need
8 therefor, nor shall persons be requested to consent to such
9 process or inspections in excess of statutory or constitutional
10 limits. In order to avoid the necessity for formal process,
11 where deemed practicable agencies may informally request
12 and receive sworn statements on matters within their juris-
13 diction with the same authority and effect as though re-
14 quested, submitted, or received at authorized formal hearings.
15 The investigative powers or means of any agency shall be
16 exercised only by the authorized representatives of such
17 agency and for its authorized purposes, and shall not be
18 exercised for the effectuation of purposes, powers, or policies
19 of any other person or agency unless such exercise is ex-
20 pressly authorized by statute.

21 SEC. 107. SUBPENAS.—Administrative subpoenas author-
22 ized by statute shall be issued only upon request and a reason-
23 able showing of the grounds, necessity, and reasonable scope
24 thereof (but such showing of facts or evidence sought shall

1 not be made available to agency prosecutors or investigators
2 in the case), and shall be issued to private parties as freely
3 as to representatives of the agency concerned.

4 SEC. 108. PUBLICITY.—Matters of record shall be made
5 available to all interested persons, except personal data or
6 material which the agency, for good cause and upon statutory
7 authorization, find should be treated as confidential and
8 except that any agency, for good cause found, may by pub-
9 lished rule preserve as confidential specified classes of in-
10 formation. Agencies may make available special informa-
11 tion upon request at cost or without charge. In all con-
12 tested proceedings, agency publicity shall be withheld dur-
13 ing preliminary or investigative phases of adjudication, ex-
14 cept that any agency may publicize and give notice of
15 general investigations or public inquiries. When formal pro-
16 ceedings are instituted, publicity and releases may be issued
17 by an agency or its officers or employees only upon equality
18 of treatment of representatives of the press and other in-
19 terested parties and shall contain only the full text of im-
20 partial summaries of documents of public record; and such
21 summaries shall, so far as deemed practicable, cover the
22 public documents or positions of all parties to the proceeding
23 or matter involved.

24 SEC. 109. PROVISION FOR THE CONTINUOUS IMPROVE-
25 MENT OF ADMINISTRATIVE PROCEDURE.—In order to as-

1 sure the continuous and proper operation of the provisions
2 of this Act, to make further studies and recommendations,
3 and to perform the special functions hereinafter provided:

4 (a) OFFICE OF FEDERAL ADMINISTRATIVE PROCE-
5 DURE.—There shall be at the seat of government an inde-
6 pendent establishment to be known as the Office of Federal
7 Administrative Procedure (hereinafter referred to as the
8 Office), with a Director learned in the law or qualified by
9 experience, who shall be appointed by the President, by
10 and with the advice and consent of the Senate, at a salary
11 of \$10,000 per annum, and who shall, unless removed by
12 the President for cause, hold office for the term of seven
13 years or until a successor shall have been appointed. The
14 Office shall be governed by a board composed of (1) the Di-
15 rector, (2) one of the associate justices of the United States
16 Court of Appeals for the District of Columbia designated for
17 that purpose by the chief justice of that court, and (3) the
18 Director of the Administrative Office of the United States
19 Courts. The latter two members shall serve ex officio and
20 without further compensation.

21 (b) PERSONNEL FUNCTIONS AND STAFF.—The board
22 (1) shall perform such functions respecting hearing com-
23 missioners as are provided in title III hereof; (2) may
24 appoint, without regard for the provisions of the civil-serv-
25 ice laws, and executive secretary and such attorneys, in-

1 vestigators, and experts as are deemed necessary to perform
2 the functions and duties vested in the Office and fix their
3 compensation according to the Classification Act of 1923,
4 as amended; and (3) may appoint such other employees,
5 with regard to existing laws applicable to the employ-
6 ment and compensation of officers and employees of the
7 United States, as it may from time to time find necessary.
8 During his term of office or employment, neither the Di-
9 rector nor any officer or employee of the Office shall engage
10 directly or indirectly in practice before, or have private pro-
11 fessional relationship with, any of the agencies or courts of
12 the United States. The Office may, with the consent of any
13 agency, utilize the personnel or facilities of the agency in
14 the performance of its duties, and may utilize any other
15 uncompensated services or facilities.

16 (c) OTHER DUTIES.—In order to carry out the policy
17 of this Act, the Office shall (1) conduct inquiries into the
18 practices and procedures of the several agencies to secure the
19 just and efficient discharge of their public duties; (2) receive
20 and respond promptly to all reasonable inquiries respecting
21 administrative functions, procedures, or practices; (3) in-
22 vestigate complaints; (4) make recommendations to Con-
23 gress and the agencies to secure the elimination of complaints
24 and the adoption of just, efficient, and uniform methods of
25 procedure; and (5) report annually on or before the 15th

1 day of January to the President and Congress respecting
2 the work of the Office during the year last past, the opera-
3 tion of this Act, and the legislative needs of the Federal
4 administrative establishment in furtherance of the policies of
5 this Act. The report shall also contain the names and quali-
6 fications of all hearing commissioners appointed since the last
7 report, and the circumstances regarding any proceedings had
8 for the removal of hearing commissioners.

9 (d) SPECIAL INQUIRIES.—The Office shall, from time
10 to time, make studies and reports (1) to indicate in what
11 respects the provisions of this Act may be amplified and
12 extended; (2) to regularize the rules of pleading and evi-
13 dence; and (3) to provide model or recommended pro-
14 cedures respecting investigations, licensing, tests and in-
15 spections, reparation cases, rate making and other special
16 forms of rule making, claims against the United States, loans
17 by public agencies, the distribution of benefits and gratuities,
18 and other special types of administrative processes.

19 (e) AGENCY LIAISON OFFICERS AND ADVISORY COM-
20 MITTEES.—Upon the request of the Office, each agency shall
21 name one of its members, officers, or employees to serve as
22 liaison officer with the Office; and each agency shall
23 promptly furnish the Office with all information and proper
24 assistance requested. The Office shall organize and name

1 advisory committees from the public service, the bar, and the
2 public to aid it in the performance of any of its functions.

3 SEC. 110. EFFECT AND ENFORCEMENT.—The provi-
4 sions of this Act shall serve as guides, limitations, or author-
5 ity for the persons affected by administrative powers, for
6 administrators in the exercise of those powers, and for the
7 courts in reviewing the exercise of such powers. Any mem-
8 ber, officer, or employee of an agency who violates the
9 mandatory provisions of this Act shall, other laws to the
10 contrary notwithstanding, be subject to disciplinary action,
11 demotion, suspension, or discharge from the public service;
12 and each agency head or member of the board or commis-
13 sion comprising the ultimate authority of any agency shall
14 take such disciplinary measures as are appropriate to the
15 case except that an honest mistake shall not be penalized.

16 SEC. 111. SUSPENSION OF PARTICULAR APPLICATIONS
17 OF CODE.—Whenever the President finds, upon the applica-
18 tion and reasoned recommendations of any agency and of
19 the Office of Federal Administrative Procedure, that the ap-
20 plication of any particular mandatory section, subsection, or
21 provision of this Act to any particular part of any function
22 or operation of such agency is unworkable or impracticable
23 he may, upon such terms and conditions as he may provide
24 to assure some other form of fair procedure as nearly as
25 may be in accordance with the policies declared by this Act,

1 suspend the operation of such application of any of the pro-
2 visions of this Act by Executive order, which shall be pub-
3 lished before the effective date of such suspension. There-
4 upon the operation of this Act as to such application shall
5 be of no force or effect until thirty days subsequent to the
6 termination of the next succeeding session of Congress,
7 unless meanwhile (a) the President shall by published order
8 have rescinded his order of suspension, or (b) Congress shall
9 have amended this Act to permit such variation or to provide
10 some substitute procedure (in which case such variation or
11 substituted procedure shall prevail), or (c) Congress shall,
12 by legislative act or concurrent resolution, have reaffirmed
13 the application of this Act (in which case the suspension
14 order of the President shall be of no further force or effect).
15 If Congress shall take no action during such period, the
16 suspension order of the President shall be of no further force
17 or effect, except that further suspension orders may be issued
18 upon like conditions. All such suspension orders, together
19 with the supporting reasons and recommendations of the
20 agency affected and of the Office of Federal Administrative
21 Procedure (which shall have been also published and made
22 available to the public at the time of the issuance of the
23 Presidential order of suspension), shall be transmitted to
24 Congress not more than ten days after the issuance of the
25 order of suspension by the President or, if Congress is

1 not then in session, not more than ten days after the com-
2 mencement of the next session of Congress; and orders re-
3 scinding such suspension orders shall be similarly published
4 and transmitted to Congress.

5 SEC. 112. SEPARABILITY OF PROVISIONS.—If any pro-
6 vision of this Act, or the application thereof, to any agency,
7 person, public duty, procedure, or circumstances is held
8 invalid, the remainder of the Act and the application of
9 such provision to others shall not be affected thereby.

10 SEC. 113. EFFECTIVE DATE OF ACT.—This act shall
11 take effect twenty days after its approval, except that sub-
12 sections 308 (b), (c), (m) (1), (m) (2), (n), and (o)
13 shall take effect six months thereafter unless prior thereto
14 an agency shall complete its necessary adjustments and
15 publish by rule its acceptance of the hearing commissioner
16 system therein provided.

17 TITLE II—ADMINISTRATIVE RULES AND 18 REGULATIONS

19 SEC. 200. DECLARATION OF POLICY.—It is the de-
20 clared policy of Congress that administrative agencies (a)
21 shall issue rules, regulations, or statements of the types
22 specified in this title in order that interested persons may
23 have all possible information, both specific and general, as
24 to administrative organization, policy, law, procedure, and
25 practice; and (b) shall formulate such rules, regulations, or

1 statements through the utilization of procedures authorized
2 by this title and designed to extend the legislative process
3 by securing the participation of interested parties, and shall
4 make complete, adequate, and timely amendments, addi-
5 tions, and revisions through the same procedures. However,
6 nothing in this title shall be deemed to require agencies to
7 formulate in advance all rules necessary to cover all situa-
8 tions or every contingency which may arise under the
9 statutes administered.

10 SEC. 201. EXCEPTIONS.—Whenever expressly found by
11 an agency to be contrary to the public interest, the provisions
12 of this title, in whole or part, shall not apply to (a) the
13 conduct of military, naval, or national defense functions, or
14 the selection or procurement of men or materials for the
15 armed forces of the United States; or (b) the conduct of
16 diplomatic functions, foreign affairs, or activities beyond the
17 territorial limits of the United States affecting the relation
18 of the United States to other nations. Such findings shall be
19 published unless, in any given case, the President shall in
20 writing direct the withholding of such publication.

21 SEC. 202. REQUIRED TYPES OF RULES.—Every agency
22 is authorized and directed to formulate, issue, and publish
23 from time to time, so far as applicable or appropriate in
24 view of the legislation and subject matter with which the

1 agency deals, rules in the following forms or containing (but
2 not necessarily limited to) the following types of information:

3 (a) AGENCY ORGANIZATION.—Every agency shall
4 promptly state in the form of rules, and keep current such
5 statements of, its internal organization, specifying (1) its
6 principal offices, officers, and types of personnel other than
7 clerical or custodial, (2) its subdivisions, (3) the places of
8 business or operation, duties, functions, and general author-
9 ity or jurisdiction of each of the foregoing, and (4) the same
10 information as to its field staff and organization.

11 (b) STATEMENTS OF POLICY.—Where an agency, act-
12 ing under general or specific legislation, has formulated or acts
13 upon general policies not clearly specified in legislation, so
14 far as practicable such policies shall be formulated, stated,
15 published, and revised in the same manner as other rules.

16 (c) RULES OF SUBSTANCE.—Each agency shall, as
17 rapidly as deemed practicable, issue all rules specifically au-
18 thorized or required by statute in order to implement,
19 complete, or make operative particular legislative provisions,
20 except that an agency may withhold such rule making by
21 publishing an explanatory rule respecting each such situation.

22 (d) INTERPRETATIVE RULES.—Each agency shall is-
23 sue, in the form of rules, all necessary or appropriate rules
24 interpreting the statutory provisions under which it operates,
25 and such rules shall reflect the interpretations currently relied

1 upon by such agency and not otherwise published in the form
2 of rules.

3 (e) RULES OF PRACTICE AND PROCEDURE.—All regu-
4 larly available procedures, formal or informal, shall be formu-
5 lated and promulgated as rules of practice and procedure.
6 The description of such procedures shall be such as to dis-
7 close, so far as practicable, the general procedural stages,
8 steps, and alternatives for all types of jurisdiction, functions,
9 or cases of each agency.

10 (f) FORMS.—Each agency may prescribe the form and
11 content of all papers, reports, applications, certificates, re-
12 quests, complaints, responses, pleadings, briefs, or other
13 documents.

14 (g) INSTRUCTIONS.—Every agency, the procedures of
15 which in whole or part involve action upon extended or
16 detailed statements, reports, or examinations, shall make
17 and issue adequate instructions for such reports or examina-
18 tions in order that persons affected may be clearly advised
19 of the scope and requirements thereof.

20 SEC. 203. FORM, CONTENT, AND PUBLICATION OF
21 RULES.—The following directions shall be observed in con-
22 nection with all rules:

23 (a) REPETITION OF LEGISLATION.—Rules shall not
24 merely repeat legislative provisions, except that, where re-
25 statement of the text of legislation is deemed advisable, legis-

1 lative provisions shall be stated in italics or quotation marks
2 and labeled to indicate their source.

3 (b) TO BE COMPLETE AND CURRENT.—All rules shall be
4 kept current at all times, and care shall be exercised to as-
5 sure that rules shall be complete but not prolix or repetitious.

6 (c) PUBLICATION OF RULES.—No agency shall act
7 upon unpublished rules, instructions, or statements, of policy,
8 except that staff instructions in special or individual cases
9 or general instructions respecting matters of internal office
10 management or routine need not be published and shall not
11 be included in rules. All other rules shall be published
12 in the Federal Register, and in addition agencies shall pub-
13 lish their rules (as reprints of the Federal Register or Code
14 of Federal Regulations, or otherwise) from time to time
15 (with or without the legislation under which they operate)
16 in pamphlet form. Rules may be so published in the Fed-
17 eral Register as soon as practicable after their effective
18 date where the agency concerned, for good cause, has found
19 it necessary to make such rules effective before such pub-
20 lication and includes in its rules a statement regarding the
21 publication of such special classes of rules.

22 (d) ORGANIZATION, FORM, AND NUMBERING.—All
23 rules of an agency may be contained in a single set, but
24 shall be separately stated as to (1) agency organization,
25 (2) practice and procedure, and (3) substance. Rules may

1 be otherwise organized as to form and numbering, provided
2 that they are organized in such a manner as, in the judg-
3 ment of the agency, will best reflect the particular subjects
4 of administration and procedure.

5 SEC. 204. RESCISSION OF RULES.—After agency with-
6 drawal or rescission, or judicial invalidation, of any rule,
7 no person shall be held to incur any liability or penalty for
8 conduct in accordance with such rule until after publication
9 of its withdrawal for not less than thirty days, except that
10 where the agency makes and publishes a finding of emer-
11 gency such rescission may take effect upon publication or
12 at any time thereafter specified by the agency. Rules may
13 be modified in particular cases, either with the consent of
14 persons affected or, where no rights are abridged or serious
15 disadvantage imposed thereby, upon reasonable adequate no-
16 tice to such persons.

17 SEC. 205. FORMULATION OF RULES.—Each agency
18 shall both (1) formulate and publish a regularized procedure
19 or procedures for the making of rules, subject to change for
20 emergencies or special situations, and (2) designate, by rule,
21 one or more of its existing or specially created units, com-
22 mittees, boards, officers, or employees, to receive suggestions
23 and facilitate, correlate, revise, and expedite the making of
24 rules, subject to the approval and supervision of the agency.

25 SEC. 206. INVESTIGATIONS PRELIMINARY TO RULE-

1 MAKING.—Prior to the making of rules or the utilization of
2 any of the procedures provided by this title, each agency
3 shall conduct such preliminary nonpublic investigations as
4 will enable it to formulate issues or proposed, tentative, or
5 final rules.

6 SEC. 207. DEFERRED EFFECTIVE DATE OF PROPOSED
7 RULES.—Wherever practicable and useful in the judgment
8 of the agency, tentative rules or proposed amendments or
9 rescissions shall be issued sufficiently in advance of their
10 effective date to permit comment, the submission and con-
11 sideration of oral or written criticism or argument, and re-
12 vision or suspension prior to the designated effective date.

13 SEC. 208. NOTICE OF RULE MAKING.—General notice
14 of proposed rule making shall be published wherever prac-
15 ticable, together with an invitation to interested parties to
16 make written suggestions or to participate in rule-making
17 procedures. Special notice to particular persons, representa-
18 tive persons, or groups or associations may be given. In
19 either case, notice of the issues or scope of the proposed
20 rules shall be given with as much particularity and definite-
21 ness as deemed practicable; and, where deemed practicable
22 by the agency, the submission, or notice of availability upon
23 request, of proposed or tentative rules shall be made as part
24 of such notice. Where hearings or conferences are to be
25 held, parties desiring to participate may be required to give

1 notice to the agency of their desire to do so and of the ma-
2 terials they wish to present or issues they wish to discuss.
3 The submission of reports or summaries of hearings, investi-
4 gations, or conferences, or the publication of tentative drafts
5 of rules, may be utilized as methods of notice of issues in
6 rule making.

7 SEC. 209. PUBLIC RULE-MAKING PROCEDURES.—
8 Without limiting the adoption of any other procedures,
9 agencies are authorized to utilize in situations deemed appro-
10 priate by them any one or more of the following types of
11 public rule-making procedures:

12 (a) SUBMISSION AND RECEPTION OF WRITTEN
13 VIEWS.—Provision for the submission and consideration of
14 written views shall be made in all cases of announced rule
15 making, unless the agency concerned determines such a
16 course to be impracticable.

17 (b) CONSULTATIONS AND CONFERENCES.—So far as
18 practicable, preliminary to the promulgation of rules, agen-
19 cies may provide for conferences and consultations with
20 persons, or representative persons, likely to be affected by
21 the proposed rules. In so doing, advisory committees or
22 any other suitable means may be used. All interested
23 parties, so far as deemed practicable, shall be invited to
24 submit written suggestions or participate orally in such
25 consultations or conferences.

1 (c) INFORMAL HEARINGS.—Where parties are nu-
2 merous, or where the protection of the public interest re-
3 quires, or where consultation and conference procedure is
4 otherwise not adapted to the subject matter, public hear-
5 ings may be held for the informal presentation of views
6 or argument with reference to proposed rules. Parties un-
7 able to attend, because of time or expense or for other
8 reasons, shall be permitted to submit written statements. Ex-
9 perts or employees of the agency may open such hearings
10 with a presentation or summary of the results of prelimi-
11 nary investigation or consideration by the agency. The
12 agency may designate any proper and responsible person
13 as a presiding officer at such hearings, whose functions shall
14 be the keeping of order, the elicitation of full data, and the
15 restriction of oral statements, arguments, or testimony to
16 reasonable limits. Agency counsel may be designated to
17 aid in questioning where such procedure is deemed helpful
18 to the agency. Records of such hearings may be kept, of
19 which, where necessary or convenient, summaries may be
20 made for the consideration of the agency or other persons
21 to whom the agency desires to refer for further comment
22 or consultation.

23 (d) FORMAL HEARINGS.—Where and to the extent
24 that, in the judgment of the agency, issues involve sharply
25 controversial matters best treated through formal proce-

1 dures, or where legislation requires the holding of formal
2 hearings prior to the making of rules, formal rule-making
3 hearings shall be held. In such hearings, both oral testi-
4 mony and sworn statements may be received, with adequate
5 opportunity for cross-examination or rebuttal: *Provided,*
6 *however,* That presiding officers, designated by the agency,
7 shall limit statements and cross-examination to matters
8 which will be helpful to the agency in reaching an informed
9 judgment. The admission and exclusion of evidence shall be
10 designed to secure for the agency all pertinent information,
11 but repetition and the compilation of unduly lengthy rec-
12 ords shall be avoided. Specific proposed findings, inter-
13 mediate recommendations, or reports shall be made and issued
14 upon which argument before the agency shall be held, but
15 these may be eliminated where tentative or proposed rules
16 are made available by published notice prior to argument.
17 Agencies may adopt in such hearing procedure such of the
18 provisions of title III hereof as they deem desirable.

19 (e) EMERGENCIES, CORRECTIONS, AND AMEND-
20 MENTS.—The foregoing procedural directions shall be dis-
21 pensed with in emergencies, as well as in making minor and
22 noncontroversial amendments.

23 (f) INITIAL PROMULGATION OF PRESENT UNPUBLISHED
24 AGENCY ORGANIZATION AND PROCEDURES.—The promul-

1 gation of the organization and procedures of each agency
2 or of a revision thereof, shall be done promptly upon the
3 approval of this Act, and, except to the extent deemed
4 necessary or advisable by the agencies, shall not be attended
5 by any of the procedures specified by this section.

6 (g) EXISTING STATUTORY REQUIREMENTS.—The fore-
7 going procedures shall not supersede or be held to repeal
8 existing statutory requirements expressed specifically in
9 legislation.

10 SEC. 210. RIGHT OF PETITION.—Any interested person
11 shall have the right to request any agency to issue, amend,
12 or rescind rules. Each agency shall provide, in accordance
13 with the provisions of this title, the form, content, and
14 procedure for the submission, reception, consideration, and
15 disposition of such requests. Reports shall be made to
16 Congress on the nature and disposition of such requests, as
17 hereinafter provided in this title.

18 SEC. 211. JUDICIAL REVIEW.—Except as otherwise
19 specifically required or precluded by law, any rule may
20 be judicially reviewed upon contest of its application to
21 particular persons or subjects, or upon proper application
22 for declaratory judgment, as follows:

23 (a) DECLARATORY JUDGMENTS.—Declaratory judg-
24 ments shall be rendered under this section only where the
25 rule, or its threatened application, interferes with or impairs,

1 or threatens to interfere with or impair, the constitutional or
2 statutory rights, privileges, immunities, or benefits of any
3 person. Such judgments may be rendered without prior
4 resort to the agency by the person seeking relief: *Provided,*
5 *however,* That controversies as to the applicability of any
6 rule to any person, property, or state of facts shall be deter-
7 mined by the declaratory ruling procedure provided in title
8 III hereof.

9 (b) SCOPE OF REVIEW.—Upon such review, whether
10 upon application for declaratory judgment or upon contest of
11 the application of the rule to any person, property, or state of
12 facts, the questions for determination by the court, so far as
13 necessary to a decision, shall include (1) all matters of con-
14 stitutional right, power, privilege, or immunity; (2) the
15 statutory authority or discretion of the agency; and (3) the
16 observance of all procedures required by law. Where, upon
17 application for declaratory judgment, contest develops as to
18 the facts or the applicability of the rule to any person, prop-
19 erty, or state of facts, the court shall refer the case to the
20 agency involved for a declaratory ruling as provided in title
21 III hereof and shall terminate the proceeding for a declara-
22 tory judgment.

23 (c) OTHER PROCEDURAL PROVISIONS.—In all other
24 respects, the provision of title III hereof regarding the judicial
25 review of adjudications shall apply in any case.

1 SEC. 212. RULINGS.—Rulings in specific cases shall not,
2 as a method or matter of general practice, be utilized to serve
3 the functions of rules. Where rulings enunciate general rules
4 or principles not otherwise published as rules or statutes, they
5 shall be followed by the prompt formulation and promulga-
6 tion of rules or statements of policy. Except those dealing
7 with matters of management, budgets, or routine of no proper
8 interest to persons having business before the agency, all
9 rulings shall be made available to any person and specially
10 published or reproduced in leaflet or bound form and, unless
11 so published and made available, shall not be utilized, cited,
12 or have any validity, force, or effect as to third parties.

13 SEC. 213. ANNUAL REPORT TO CONGRESS ON RULES.—
14 Annually, in its report to Congress or otherwise, each agency
15 shall transmit to Congress all rules promulgated during the
16 preceding year, together with explanatory material relating
17 to their substance and the procedure utilized in their formula-
18 tion and promulgation. Such report shall also contain a
19 statement concerning the nature and disposition of petitions
20 received requesting the formulation, amendment, or repeal of
21 rules as provided in this title.

22 TITLE III—ADMINISTRATIVE ADJUDICATIONS

23 SEC. 300. DECLARATION OF POLICY.—It is the de-
24 clared policy of Congress that administrative adjudications
25 shall be attended by procedures which assure to every per-

1 son affected: (a) Specific notice of issues and procedures at
2 every stage of proceeding; (b) an adequate opportunity to
3 present evidence and argument and to hear or see argument
4 or evidence presented against him, including an opportunity
5 to present such evidence and argument to any representative
6 of any agency actually engaged in the formulation of decision;
7 (c) prompt and speedy decision by impartial officers; (d)
8 the full relief authorized by law where such relief is requested
9 or, where sanctions are imposed, no greater or different
10 penalties than those authorized by statute; and (e) an
11 opportunity for judicial review as hereinafter provided.

12 SEC. 301. EXCEPTION.—Nothing contained in this title
13 shall apply to or affect any matter concerning or relating to—

14 (a) administrative decisions, determinations, or
15 orders subject to, or made and issued upon, trial de novo
16 by a separate and independent administrative tribunal
17 or in any court;

18 (b) diplomatic functions or foreign affairs, except
19 in cases where particular citizens or residents of the
20 United States are parties;

21 (c) the conduct of the military or naval establish-
22 ments, the selection or procurement of men or materials
23 for the armed forces of the United States, and national-
24 defense functions declared and published by the President
25 during any period of national emergency.

1 (d) the selection, appointment, promotion, transfer,
2 dismissal, or discipline of an employee or officer of any
3 agency;

4 (e) arbitration, mediation, or adjustment (as dis-
5 tinguished from adjudication) in the field of labor re-
6 lations and other fields;

7 (f) fiscal and monetary operations of the Treasury,
8 including foreign funds control;

9 (g) functions concerned with public works, relief,
10 lending, or spending;

11 (h) the procurement or disposition of public (or
12 publicly held) property; or (i) the admission or control
13 of aliens.

14 *Provided, however, That, notwithstanding such exceptions*
15 *other than those stated in (a) hereof, the provisions of this*
16 *title shall apply to all proceedings in which the statutory*
17 *rights, duties, or other legal relations of any person are re-*
18 *quired by law to be determined only after opportunity for*
19 *hearing and, if a hearing be held, only upon the basis of a*
20 *record made in the course of such hearing; and, as to all*
21 *adjudicatory proceedings excepted from the operation of*
22 *this title, its provisions, except those for judicial review and*
23 *the appointment of hearing commissioners, shall be deemed*
24 *advisory and may be adopted in whole or in part by rule*
25 *of any such agency.*

1 SEC. 302. EXPEDITION OF ADMINISTRATIVE ADJUDI-
2 CATIONS.—Except upon the request or consent of the par-
3 ties or where the public or private interests will not suffer
4 unreasonably by delay, it is the declared policy of Congress
5 that administrative adjudications shall be made speedily, and
6 matters not susceptible of prompt informal disposition shall
7 be set for formal hearing forthwith, and promptly heard,
8 argued, and decided. In fixing the times and places for for-
9 mal or informal proceedings, due regard shall always be had
10 for the convenience and necessity of the parties involved or
11 their representatives.

12 SEC. 303. DEFAULTS AND INFORMAL DISPOSITIONS.—
13 Any agency is authorized to make informal disposition of
14 adjudications or controversies within its jurisdiction, in whole
15 or in part, and may make, issue, or enter (1) stipulations,
16 agreed settlements, or consent orders; or (2) default judg-
17 ments or orders where parties fail to file required answers
18 or other required responsive pleadings or fail to appear or
19 participate in scheduled formal proceedings or, upon request
20 by the agency, fail to give notice of intention to do so.
21 Whether or not facts are found, stipulated, or admitted, all
22 such dispositions shall have the same force and effect as
23 orders or determinations after formal proceedings. Formal
24 procedures or hearings shall not be required or held in un-
25 contested cases or where parties consent to proceed other-

1 wise, unless in the judgment of the agency (1) the great
2 number of parties or issues makes impossible or inadequate
3 informal or default disposition or (2) the unusual nature and
4 importance of the controversy require formal procedure in
5 the protection of the public interest.

6 SEC. 304. DECLARATORY RULINGS.—Upon the petition
7 of any interested person, every agency shall, in accordance
8 with the provisions of this title, make and issue declaratory
9 rulings when necessary to terminate a controversy or to
10 remove a substantial uncertainty as to the application of
11 administrative statutory authority or rules, with the same
12 effect, and subject to the same administrative or judicial
13 review or reconsideration as in the case of all other author-
14 ized adjudications of the agency. Such rulings shall not
15 bind, or affect the rights of, persons or property not par-
16 ties to, or named as the subject of, such proceedings to any
17 greater extent than other types of authorized adjudications
18 made pursuant to this title.

19 SEC. 305. NOTICE IN FORMAL AND INFORMAL PRO-
20 CEEDINGS.—All notices, complaints, orders to show cause,
21 moving papers, or amendments thereto issued by any agency
22 shall specify with particularity the matters or things in issue,
23 and shall not include charges or implied charges or require-
24 ments phrased generally or in the words of the statute under
25 which the agency is proceeding: *Provided*, That an agency

1 may identify, and quote or use the words of, any statute
2 in the preliminary recitals to any notice and shall specify
3 the statutory jurisdiction or other authority under which it
4 is acting. Notices of the denial of applications, petitions,
5 or other requests of persons shall be made and served upon
6 the persons involved, shall specify with particularity the
7 reasons and grounds for denial, and shall, so far as deemed
8 practical, contain complete and specific suggestions or direc-
9 tions as to further administrative procedures or alternatives
10 available to the persons involved.

11 SEC. 306. RESPONSIVE PLEADINGS OR NOTICES.—In
12 lieu of or in addition to answers and other responsive plead-
13 ings, agencies are authorized to require notice by the parties
14 of a desire to be heard and intention to appear.

15 SEC. 307. REQUIREMENT OF FORMAL PROCEDURES.—
16 In all cases where informal procedures do not result in con-
17 sent dispositions of matters initiated by an agency or pending
18 upon applications for licenses, permits, claims, or permis-
19 sions, formal adjudicatory procedure for the hearing and
20 decision of cases shall be provided in accordance with sec-
21 tion 308 hereof except that (a) where decisions rest upon
22 inspections or tests, upon demand reinspections or retests by
23 superior officers shall be provided where other types of formal
24 procedures are not provided; (b) where time or other factors
25 indispensably require (and statutes authorize) summary pre-

1 liminary, intermediate, or final action and disposition of mat-
2 ters, responsible officers or agents shall be made available for
3 conferences and the prompt adjustment or other fair dis-
4 position of such matters, subject to prompt and fair informal
5 review by the agency itself upon the request or protest of
6 persons involved; (c) emergency action, where authorized
7 and provided by law, shall be subject, so far as possible, to
8 prompt reconsideration by the agency, with fair opportunity
9 to present evidence and argument; and (d) by consent of
10 the parties the application of any of the provisions of this
11 title may be modified respecting any particular case.

12 SEC. 308. FORMAL HEARINGS AND DECISIONS.—In
13 order to simplify, make uniform, and assure to every person
14 a full and fair hearing and decision in every instance of
15 administrative adjudication, the following formal procedures
16 shall be observed:

17 (a) SEGREGATION OF PROSECUTING FUNCTIONS IN
18 FORMAL PROCEEDINGS.—In all cases where agencies or their
19 members or representatives make formal adjudications there
20 shall be a complete segregation of prosecuting from hearing
21 and deciding functions. Those heads, members, officers, em-
22 ployees, or representatives of any agency engaged in pre-
23 siding at hearings or formulating findings and decisions in the
24 course of formal proceedings shall not consult or advise with
25 agency, counsel, investigators, representatives, or employees

1 except upon notice to all affected parties and in open hearing
2 or otherwise as provided herein: *Provided*, That the head,
3 or members of a board which comprises the ultimate au-
4 thority, of any agency may, so far as deemed desirable or
5 necessary by the agency, in any case both hear or decide
6 and (a) supervise or authorize the institution and general
7 conduct of proceedings or the issuance of preliminary or
8 intermediate orders or process, or (b) supervise the con-
9 sideration, or reject offers, of settlement or consent disposition
10 prior to or after the institution of formal proceedings; and
11 any agency may, in its own name or by subordinate officers
12 or employees, formally appear upon papers, pleadings, and
13 decisions both as a moving party and as the deciding author-
14 ity in any cause within its jurisdiction. Nothing herein
15 shall be taken to preclude agency experts and other personnel
16 from appearing at hearings and submitting opinions or
17 evidence in the same manner as other witnesses.

18 (b) HEARING AND DECIDING, OR PRESIDING, OFFI-
19 CERS.—Whenever the head of an agency or one or more
20 members of the board or body which comprises the highest
21 authority of the agency or a State representative authorized
22 by statute to do so does not preside at the taking of evidence,
23 all cases shall be heard and decided by a “hearing commis-
24 sioner” as hereinafter provided. All other cases shall be
25 heard and decided in accordance with this title by the head

1 of an agency, or the board or body which constitutes the
2 ultimate authority of the agency, or one or more members
3 thereof; or an authorized representative of one of the States.
4 All such hearing and deciding officers are hereinafter desig-
5 nated as "presiding officers", whose functions shall be ju-
6 dicial in nature and whose conduct shall be governed by the
7 accepted canons of judicial ethics. As a matter of policy
8 and general practice, presiding officers shall also render
9 decisions in the cases they have heard. Where the head of
10 an agency or the entire membership of the ultimate board
11 or authority itself decides a case in the first instance as here-
12 in provided, the provisions hereinafter made for appeal to
13 the agency shall not apply.

14 (c) HEARING COMMISSIONERS.—Subject to the pro-
15 visions of this Act and other provisions of law not incon-
16 sistent herewith, there shall be appointed for each agency
17 as many duly qualified hearing commissioners as may from
18 time to time be deemed necessary for the hearing and
19 decision of cases, and who shall have or perform no other
20 duties or functions.

21 (1) Such appointments may be made upon nomination
22 by the agency and without regard for the provisions of the
23 civil-service laws or other existing laws applicable to the
24 employment and compensation of officers and employees of
25 the United States, by the Office of Federal Administrative

1 Procedure (hereinafter referred to as the Office) after its
2 consideration and approval of the training, experience, char-
3 acter, and temperament of such nominees to discharge the
4 responsibilities of the office of hearing commissioner. The
5 Office is authorized to make such investigations as may be
6 necessary in order to pass upon the qualifications of nom-
7 inees. Reappointments may be made by the Office, without
8 the recommendation or intercession of the agency concerned,
9 in all cases where hearing commissioners have rendered
10 creditable service. In the nomination, approval, disap-
11 proval, appointment, or reappointment of hearing commis-
12 sioners no political test or qualification shall be permitted or
13 given consideration, but all nominations and approvals shall
14 be made solely upon the basis of merit and efficiency.

15 (2) Hearing commissioners shall receive an annual
16 salary of not less than \$3,600 or more than \$9,000, to be
17 paid from the available funds of the agency for which they
18 are appointed or to which they are assigned. The Office
19 shall fix, and may adjust from time to time, the appropriate
20 salary scale for the hearing commissioners of each agency or
21 type of functions or cases involved; and except as the salaries
22 of hearing commissioners in office may be affected by such
23 general adjustments in salary scales or appointment of such
24 commissioners to different grades, the salary of any hearing
25 commissioner shall not be increased or diminished during his

1 term of office otherwise than by operation of an Act of
2 Congress.

3 (3) Each hearing commissioner shall hold office for a
4 period of twelve years and shall be removable only (a)
5 upon certification by the agency executive that lack of
6 official business or insufficiency of available appropriations
7 renders necessary the termination of the hearing commis-
8 sioner's appointment, and the approval of the Office; or
9 (b) upon the statement of charges by the agency that he
10 has been guilty of malfeasance in office or has been neglect-
11 ful or inefficient in the performance of duty; or (c) upon
12 the statement of like charges by the Attorney General of
13 the United States, which the Attorney General is authorized
14 to make in his discretion after investigation of any complaint
15 against a hearing commissioner made to the Attorney Gen-
16 eral by a person other than an agency. If the removal of
17 a hearing commissioner is made after certification and ap-
18 proval as provided in (3) (a) hereof, the hearing commis-
19 sioner so removed shall be placed upon an eligible list for
20 reappointment in the event that circumstances warrant, and
21 no new appointments of hearing commissioners shall be
22 made in the agency of which he has been a part except by
23 the Office from persons whose names appear on such list.
24 A hearing commissioner upon whom charges under (3)
25 (b) or (3) (c) hereof have been served may within five

1 days thereafter demand a hearing upon the charges, to be
2 held before the members of the Office or, if the Office so
3 directs, before a trial board consisting of the Director and
4 two other members designated by the Office. The manner
5 by which requests for such hearings shall be made, the
6 time and place at which such hearings shall be had, and
7 the hearing procedure shall be prescribed by the Office. A
8 hearing commissioner against whom such charges have been
9 made shall stand suspended from office, but his salary shall
10 continue for five days or until service of findings upon him
11 after the hearing herein provided. The decision of the
12 Office or the trial board, as the case may be, shall be accom-
13 panied by findings based upon the record of the hearing, and
14 shall be final and unreviewable by any other officer or in
15 any other forum. In the event the Office or the trial board,
16 as the case may be, concludes that good cause for removal of
17 a hearing commissioner has been shown, the hearing com-
18 missioner shall be deemed to have been removed from office
19 as of the date on which findings so sustained are served upon
20 him; but if it be concluded that such cause for removal of a
21 hearing commissioner has not been established, the suspension
22 of the hearing commissioner under charges shall terminate
23 forthwith, and the hearing commissioner shall be at once
24 restored to active status.

25 (4) In case of emergencies, the temporary incapacity

1 of available hearing commissioners, temporary congestion of
2 dockets, or where cases arise so infrequently that permanent
3 hearing commissioners are unnecessary or where the Office
4 for good cause authorizes the appointment of provisional
5 hearing commissioners, hearing commissioners may be ap-
6 pointed as herein provided for a period not to exceed one
7 year, which may be once renewed with the consent of the
8 Office. At the conclusion of such provisional period, such
9 hearing commissioners shall be regularly nominated, ap-
10 proved, and appointed, or in the alternative, shall be com-
11 pletely and permanently relieved of all assignments calling
12 for the fulfillment of tasks appropriately performed by any
13 hearing commissioner in the agency.

14 (5) Upon such terms and conditions as it may deem
15 proper, the Office may authorize the temporary, intermit-
16 tent, or occasional utilization of services of the hearing com-
17 missioners of one agency by another agency where the
18 respective agencies request and consent to such service.

19 (6) The agency itself, or through a chief hearing com-
20 missioner whom it designates from among its duly appointed
21 hearing commissioners, or any other designated officer or
22 employee, shall assign cases to such commissioners, super-
23 vise the agency docket, and take all other similar appropriate
24 and necessary steps to facilitate and expedite the hearing
25 and decision of cases.

1 (7) Examiners presently in office with civil-service
2 status, or hereafter appointed as presiding or hearing offi-
3 cers through civil service, may act and shall be designated
4 as hearing commissioners under this section, but shall be
5 subject to this section with respect to salaries and removals
6 from office.

7 (d) DISQUALIFICATION OF PRESIDING OFFICERS.—
8 Any party may file with the agency a timely affidavit of
9 personal bias or disqualification of any presiding officer as-
10 signed to hear and determine any case, setting forth with
11 particularity the grounds for such disqualification. After
12 investigation or hearing by the agency or any other presid-
13 ing officer to whom the matter may be referred, the agency
14 or such presiding officer shall either find the affidavit without
15 merit and direct the case to proceed as assigned or cause
16 another presiding officer to be assigned to the case. Where
17 such affidavit is found to be without merit the affidavit,
18 any record made thereon, and a memorandum decision and
19 the order of the agency shall be made a part of the record
20 in the case and subject to available judicial review upon
21 appeal from any order or decision ultimately entered. A
22 presiding officer shall withdraw from any case wherein he
23 deems himself disqualified for any reason.

24 (e) POWERS AND DUTIES OF PRESIDING OFFICERS.—
25 In all cases presiding officers shall have power in any place

1 (1) to administer oaths and affirmations, and take affidavits;
2 (2) to issue subpoenas requiring the attendance and testi-
3 mony of witnesses and the production of books, contracts,
4 papers, documents, and other evidence; (3) to summon
5 and examine witnesses and receive evidence; (4) to cause
6 depositions to be taken in the manner prescribed by the
7 rules of the agency; (5) to regulate all proceedings in every
8 hearing before them and, subject to the rules and regula-
9 tions of the agency, to perform all acts and take all measures
10 necessary for the efficient conduct of the hearing; (6) to
11 admit or exclude evidence; (7) to rule upon the form
12 of any question asked or the scope and extent of testimony,
13 statements, or cross-examination; and (8) subject to the
14 rules of the agency, to dispose of motions, requests for
15 adjournment continuances, and similar matters.

16 (f) ENFORCEMENT OF ORDER AND PROCESS.—If any
17 person in connection with any administrative proceeding
18 disobeys or resists any lawful order or process, or in guilty
19 of misconduct during a hearing or so near the place thereof
20 as to obstruct the same, or neglects to produce, after having
21 been ordered to do so, any pertinent book, paper, or docu-
22 ment, or refuses to appear after having been subpoenaed, or
23 refuses to take the oath as a witness, or after taking the
24 oath refuses to be examined according to law, the agency
25 shall certify the facts to the district court having jurisdiction

1 in the place at which the hearing is held, which court shall
2 thereupon in a summary manner hear the evidence as to the
3 acts complained of, and, if the evidence so warrants, compel
4 compliance or punish such person in the same manner as for
5 contempt.

6 (g) PREHEARING CONFERENCES.—Upon being so au-
7 thorized and directed by the agency specially or by rules,
8 every presiding officer shall have power, at any time sub-
9 sequent to the formal initiation of the case and prior to his
10 decision, to initiate, conduct, or participate in negotiations
11 looking toward the informal settlement or other disposition
12 in whole or in part of any case; and, in accordance with such
13 rules and regulations as may be prescribed by the agency,
14 each presiding officer shall have power in any case to direct
15 the parties or their attorneys to appear before him at any
16 such time for a conference to consider (1) the simplification
17 of the issues; (2) the necessity or desirability of amend-
18 ments to the pleadings; (3) the possibility of obtaining stipu-
19 lations of fact and documents which will avoid unnecessary
20 proof; (4) the limitation of the number of expert or other
21 witnesses; and (5) such other matters as may expedite and
22 aid in the disposition of the case.

23 (h) RULES OF EVIDENCE.—Immaterial, irrelevant, and
24 unduly repetitious evidence shall be excluded from the record
25 of any hearing and, as nearly as may be, the basic principles

1 of relevancy, materiality, and probative force as recognized
 2 in Federal judicial proceedings of an equitable nature shall
 3 govern the proof of all questions of fact, except that such
 4 principles shall be (1) broadly interpreted in such manner
 5 as to make effective the adjudicative powers of administrative
 6 agencies, (2) shall be adapted to the legislative policy under
 7 which adjudications are made, and (3) shall assure that as
 8 a practical matter testimony of reasonable probative value
 9 will not be excluded as to any pertinent fact.

10 (i) CROSS-EXAMINATION, WRITTEN EVIDENCE, DE-
 11 POSITIONS, STIPULATIONS.—Reasonable cross-examination in
 12 open hearing shall be permitted in the sound discretion of the
 13 presiding officer except that (1) ex parte statements may be
 14 admitted upon consent of the parties; (2) any agency may
 15 adopt procedures for the disposition of contested matters in
 16 whole or part upon the submission of written evidence,
 17 particularly with respect to technical matters and matters
 18 of conclusion or inference upon readily available and gen-
 19 erally undisputed data, but subject always to rebuttal or
 20 cross-examination upon demand; (3) the taking of evidence
 21 upon deposition may be utilized by any agency to simplify
 22 and expedite the hearing or determination of cases, under
 23 such rules as the agency may provide; and (4) any agency
 24 may simplify hearings by providing for agreed stipulations
 25 of fact as to the whole or any part of the issues in any case.

1 (j) OFFICIAL NOTICE.—Agencies may take official notice
2 of any matter of generally recognized fact or any technical
3 or scientific fact of established character, but parties shall be
4 notified either during hearings or by full reference in deci-
5 sions or reports or otherwise, of the matters so noticed, with
6 an adequate opportunity to show that such facts are erro-
7 neously noticed.

8 (k) SUBMISSION OF PROPOSED REPORTS, FINDINGS,
9 ARGUMENTS, AND BRIEFS.—At the conclusions of hearings,
10 the presiding officer shall afford the parties due notice and
11 opportunity for the submission of proposed findings and
12 briefs or memoranda, and for oral argument. Where the
13 agency itself decides a case or responds to certified questions
14 of law or policy in which it has not heard the evidence and
15 in which no decision of a presiding officer has been rendered,
16 as authorized by subsection (m) (2) hereof, an intermediate
17 report of specific, recommended, and reasoned findings of
18 fact and conclusions of law shall be made and issued by the
19 officer or officers who presided at the taking of evidence; and
20 the agency, before decision, shall afford all parties reasonable
21 opportunity for briefs and argument before it upon the basis
22 of such report or upon such other and further specification
23 of issues as it may indicate to the parties.

24 (l) RECORDS.—In all formal proceedings only one
25 official record (of which there may be any number of copies)

1 shall be kept, upon which decision shall be made and which
2 shall be available to all parties. As to matters of fact,
3 officers hearing or deciding cases, and their assistants or
4 clerks, shall, except as to briefs filed in the case and appro-
5 priate matters of official notice, consult no other files, records,
6 data, or materials.

7 (m) DECISIONS.—In the consideration and decision of
8 all administrative cases submitted for adjudication—

9 (1) presiding officers who heard the case (unless
10 unavailable because of death, illness, suspension, or
11 otherwise, in which case another presiding officer shall
12 complete the disposition of the case) shall find all the
13 relevant facts, including conclusions and inferences of
14 fact, make conclusions of law, and enter an appropriate
15 order, award, judgment, or other form of decision, which
16 shall become a part of the record;

17 (2) in unusual cases the presiding officer may, upon
18 the conclusion of the hearing in any case, certify to the
19 agency any questions or propositions of law or policy
20 for instructions, and thereupon the agency shall give
21 binding instructions on the questions or propositions so
22 certified; or, upon the conclusion of the hearing in any
23 case, the agency, on petition of all the private parties
24 therein and for good cause shown, may direct that the
25 entire record be forthwith transmitted to it for decision;

(3) all decisions, whether of the presiding officer or of the agency itself, shall be in writing and accompanied both (1) by a statement of the reasons therefor (which may be simple or elaborate as the case may be deemed to require) and (2) by separately stated findings of fact (except to the extent that the facts are stipulated) and conclusions of law upon all points upon which the decision is rested, except that separate statements of reasons may be omitted where such findings or conclusions adequately set forth the reasons for the decision, and except that on review by it any agency may adopt in whole or part the findings, conclusions, and decisions of presiding officers;

(4) in the consideration and decision of any case, hearing or deciding officers shall personally master such portions of the record as are cited by the parties. They may utilize the aid of law clerks or assistants (who shall perform no other duties or functions) but such officers and such clerks or assistants shall not discuss particular cases or receive advice, data, or recommendations thereon with or from other officers or employees of the agency or third parties, except upon written notice and with the consent of all parties to the case or upon open rehearing;

(5) all such findings, conclusions, decisions, opin-

1 ions, and orders shall be promptly served upon the in-
2 terested parties or their representatives, together with,
3 so far as practicable, a statement of any further pro-
4 cedures or alternatives available to such parties;

5 (6) in every case, the findings and conclusions shall
6 encompass all relevant facts of record and shall them-
7 selves be relevant to, and shall adequately support, the
8 decision, order, or award entered;

9 (7) each agency shall specially publish in leaflet
10 or bound form such of its decisions as are deemed valu-
11 able to the public or are to be relied upon as precedents;

12 (8) nothing in this section shall be taken to pre-
13 clude any officer or employee of an agency, or group of
14 officers or employees, from presenting for the consider-
15 ation of deciding officers proposed findings, reports, or
16 decisions (in addition to those presented by the pre-
17 siding officer) provided the parties are afforded adequate
18 notice and opportunity to meet such proposals by briefs
19 and oral argument.

20 (n) EFFECT OF DECISIONS OF PRESIDING OFFICERS.—
21 In the absence of an appeal to, or review by, the agency
22 within such reasonable period of time as may be prescribed
23 by rule by the agency for that purpose, a decision of a pre-
24 siding officer shall without further proceedings become the
25 final decision of the agency and, as such, enforceable (or

1 subject to subsequent reopening or reconsideration) to the
2 same extent and in the same manner as though it had been
3 duly entered by the agency as its decision, judgment, order,
4 award, or other ultimate determination in the case. De-
5 cisions subject to the approval of the President, however,
6 shall not become effective until such approval has been duly
7 given.

8 (o) AGENCY REVIEW OF DECISIONS OF PRESIDING
9 OFFICERS.—Upon appeal to the agency from a decision of
10 a presiding officer, the appellant shall set forth separately
11 each error asserted, in detail and with particularity; and
12 only such questions as are specified by the appellant's peti-
13 tion for review and such portions of the record as are specified
14 in the supporting brief need be considered by the agency.
15 Where the appellant asserts that the findings of fact made
16 by the presiding officer are unsupported by evidence, the
17 agency may limit its review of such ground to the inquiry
18 whether, upon the portions of the record cited by the parties,
19 the findings made by the presiding officer are clearly con-
20 trary to the manifest weight of the evidence. Where an
21 agency on petition or on its own motion reviews the decision
22 of a presiding officer, it shall with particularity specify the
23 points, issues, or grounds of such review. Upon the taking
24 of an appeal to it or upon review by it on petition or its own
25 motion, the agency shall have authority to affirm, reverse,

1 modify, or set aside in whole or in part the decision of the
2 presiding officer, or to remand the case to the presiding officer
3 for the purpose of receiving further evidence and making
4 further findings and conclusions or for further proceedings.

5 (p) REHEARING, REOPENING, AND RECONSIDERA-
6 TION OF DECISIONS.—All decisions which have become final
7 may be subject to rehearing, reopening, or reconsideration
8 by a presiding officer of the agency in the manner and to
9 the extent authorized by the legislation under which the
10 agency originally exercised adjudicatory powers, under such
11 rules as the agency may provide.

12 SEC. 309. SANCTIONS AND BENEFITS.—Only upon
13 final adjudication shall action be taken or powers exercised
14 except in connection with necessary preliminary, intermedi-
15 ate, or emergency powers expressly authorized by statute.
16 Penalties, recoveries, denials, conditions, and prohibitions
17 shall not be imposed, exercised, or demanded beyond those
18 authorized by statute, and no sanctions not authorized by
19 statute shall be imposed by any agency or combination of
20 agencies. Rights, privileges, benefits, or licenses authorized
21 by law shall not be denied or withheld in whole or in part
22 where adequate right or entitlement thereto is shown. The
23 effective date of the imposition of sanctions or withdrawal
24 of benefits or licenses shall, so far as deemed practicable, be
25 deferred for such reasonable time as will permit the persons

1 affected to adjust their affairs to accord with such action or
2 to seek administrative reconsideration or judicial review.

3 SEC. 310. JUDICIAL REVIEW.—In order to facilitate
4 and simplify review by the Federal courts of all administra-
5 tive adjudications and to eliminate technical impediments
6 thereto, judicial review of administrative action shall be
7 had in accordance with the following principles:

8 (a) SPECIAL PROVISIONS.—All provisions of law for
9 judicial review applicable to particular agencies or subject
10 matter, except as the same may be inconsistent with the pro-
11 visions of this title, shall remain valid and binding, as shall
12 all provisions specifically precluding judicial review or pre-
13 scribing a broader scope of review than provided in sub-
14 section (c) hereof.

15 (b) RIGHT AND PARTIES.—Except as otherwise specifi-
16 cally provided by law or excepted from the operation of
17 this title, and regardless of whether the subject is one of
18 constitutional or statutory right, power, privilege, immunity,
19 or benefit, any party adversely affected by any final decision
20 of any agency rendered pursuant to the formal procedures
21 provided herein shall be entitled to judicial review in accord-
22 ance with applicable statutory provisions or, in the absence
23 thereof, by application in equity or for writ of mandamus.
24 All decisions upon such review shall be subject to appeal,

1 or review upon writ of certiorari by the Supreme Court
2 of the United States, as provided by law.

3 (c) COURTS AND VENUE.—Whenever a court shall hold
4 that it is without jurisdiction to hear and determine a timely
5 application or petition for such review on the ground that
6 the same should have been filed before some other court, it
7 shall transmit such pleadings and other papers, together
8 with a statement of its reasons for doing, to such court of
9 competent jurisdiction as may be designated by the applicant
10 or petitioner, which court shall, after permitting any neces-
11 sary amendments, thereupon proceed as in other cases.
12 Where such applications or petitions are filed in the proper
13 court but are deficient in form or type of remedy, timely
14 amendment shall be permitted.

15 (d) REVIEWABLE ORDERS.—Administrative orders, de-
16 claratory or otherwise, directing action, assessing penalties,
17 prohibiting conduct, or denying claimed rights, privileges,
18 or benefits under the Constitution or statutes shall be sub-
19 ject to such review: *Provided, however,* That only final or-
20 ders or orders for which there is no other adequate judicial
21 remedy shall be subject to such review. Preliminary or in-
22 termediate orders, so far as the same are by law reviewable,
23 shall be subject to review upon the review of final orders.
24 An order shall be final for purposes of such review not-
25 withstanding that no petition for rehearing or reconsidera-

1 tion has been presented to the administrative authority in-
2 volved.

3 (e) SCOPE OF REVIEW.—Regardless of the form of the
4 review proceeding, the reviewing court shall consider and
5 decide, so far as necessary to its decision and where raised by
6 the parties, all relevant questions arising upon the whole
7 record or such parts thereof as may be cited by any of the
8 parties; and shall set aside administrative findings, inferences,
9 conclusions, or orders whenever it finds them: (1) contrary
10 to constitutional right, power, privilege, or immunity; (2)
11 in excess of the statutory authority or jurisdiction of the
12 agency; (3) made or promulgated upon unlawful procedure;
13 (4) unsupported by substantial evidence; or (5) arbitrary
14 or capricious: *Provided, however,* That upon such review
15 due weight shall be accorded the experience, technical com-
16 petence, specialized knowledge, and legislative policy of the
17 agency involved as well as the discretionary authority con-
18 ferred upon it.

19 (f) RECORD.—Upon petition or application for judicial
20 review, enforcement, or restraint of an administrative order
21 or action, it shall not be necessary to print the complete
22 administrative record and exhibits in the case unless the
23 reviewing court for good cause so orders. The moving party
24 shall print as a supplement or appendix to his brief, which
25 may be separately bound, the pertinent pleadings, orders,

1 decisions, opinions, findings, and conclusions of both the
2 agency and any presiding officer, together with relevant
3 docket entries arranged chronologically and such further parts
4 of the record as it is desired the court shall read. Omissions
5 shall be indicated, reference to the pages of the typewritten
6 transcript of the record as filed shall be made, and the
7 names of witnesses shall be indexed. The responding party
8 shall similarly print such portions of the record as it is
9 desired the court shall read. Reviewing courts may by rule
10 amplify or modify the provisions of this section to further
11 its purpose.

79TH CONGRESS
1ST Session

H. R. 1206

A BILL

To prescribe fair standards of administrative
procedure, and for other purposes.

By Mr. WALTER

JANUARY 8, 1945

Referred to the Committee on the Judiciary

79TH CONGRESS
1ST SESSION

H. R. 2602

IN THE HOUSE OF REPRESENTATIVES

MARCH 13, 1945

Mr. GWYNNE introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To facilitate the administration of government and improve the quality of justice.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Fair Government Prac-
4 tices Act". Its objects shall be to improve the relations
5 between private citizens and governmental authority, to
6 facilitate the administration of justice, to protect civil rights,
7 and to preserve the form of government guaranteed by the
8 Constitution of the United States of America.

9 PUBLIC INFORMATION

10 SEC. 2. To the end that every person, entity, or organi-

1 zation shall be fully informed of the law, regulations, and
2 procedure of every office, board, commission, independent
3 establishment, authority, corporation, department, bureau,
4 division, institution, service, administration, or other unit
5 of the executive branch of the Federal Government, herein-
6 after called "agency", except to the extent that there is
7 directly involved any military, naval, or diplomatic func-
8 tion requiring secrecy in the public interest—

9

RULES

10 (a) Every agency shall separately state and currently
11 publish in the Federal Register—

12 (1) descriptions of its internal and field organiza-
13 tion, together with the general course and method by
14 which each type of matter directly affecting private
15 parties is channeled and determined;

16 (2) substantive regulations authorized by law
17 and required to effectuate authority or apprise parties
18 of rights or liabilities, as well as all statements of general
19 policy or interpretation of general public application
20 and utilized by the agency; and

21 (3) rules specifying the nature and requirements
22 of all formal or informal procedures available to pri-
23 vate parties, including simplified forms and adequate
24 instructions as to all papers, reports, or examinations.

ORDERS

1
2 (b) Every agency shall preserve and publish or make
3 available to public inspection all—

4 (1) rulings on questions of law, other than those
5 relating to the internal management of the agency and
6 not directly affecting the public or the rights of any
7 person as defined by this Act; and

8 (2) orders, including findings or opinions with
9 reference thereto, issued in the adjudication of any case.

RELEASES

10
11 (c) All releases intended for general public informa-
12 tion or of general application or effect not otherwise published
13 or made available pursuant to this section shall be—

14 (1) filed promptly with the Division of the Federal
15 Register, and

16 (2) there preserved and made available to public
17 inspection:

18 *Provided, however,* That no agency shall, directly or in-
19 directly, issue publicity reflecting adversely upon any person,
20 product, commodity, security, private activity, or enterprise
21 otherwise than by issuance of the full texts of authorized
22 public documents, impartial summaries of the positions of all
23 parties to any controversy, or the issuance of legal notice of
24 public proceedings within its jurisdiction.

1 LIMITATION OF PENALTIES, INVESTIGATIONS, AND
2 REPORTS

3 SEC. 3. To the end that administrative penalties, investi-
4 gations, and reports shall be limited to the requirements of
5 good government, and parties be assured rights of ap-
6 pearance and prompt relief—

7 PENALTIES AND BENEFITS

(a) No agency shall impose penalties or forbid or require action not both specified by statute and expressly delegated to such agency by lawful authority; and any sanction, seizure, process, penalty, prohibition, requirement, remedy, relief, assistance, license, permit, or other grant, or permission imposed or dispensed by any agency through any rule, order, license (including any term or condition thereof), or otherwise shall be unlawful to the extent that it is in excess of administrative authority or withholds privileges or benefits in derogation of private right: *Provided, however,* That no person shall be subject to any rule or order prior to its publication or service, respectively, for a reasonable time unless both expressly authorized by law and required in any case for good cause: *And provided further,* That no person shall be subjected to any penalty or deprived of any right or privilege for action taken in accordance with the rule, order, permission, or interpretation of any agency.

LICENSES AND PERMITS

(b) No license (including permit, certificate, approval, registration, charter, membership, or other form of permission) shall—

(1) be required by any agency unless expressly authorized by statute;

(2) be denied or withdrawn, revoked, annulled, or suspended in whole or in part except in accordance with this Act;

(3) be withdrawn unless first any facts which may warrant such withdrawal shall have been officially brought to the attention of the licensee in writing followed by reasonable opportunity to demonstrate or achieve compliance with all lawful requirements except in cases of clearly demonstrated willfulness or those in which public health, morals, or safety require otherwise; or

(4) expire, with reference to any business, occupation, or activity of a continuing nature in any case in which due and timely application for a renewal or a new license has been made, until such application shall have been finally determined:

Provided, moreover, That in any case subject to section 6 (except financial reorganizations) in which an administrative license or permission is required by law and due request is made therefor but no final administrative action is taken,

1 such license or permission shall be deemed granted in full
2 to the extent of the authority of the agency unless the
3 agency shall within sixty days of such application have set
4 the matter for formal proceedings required by this Act.

5 INVESTIGATIONS

6 (c) No agency shall exercise investigative powers or
7 require reports unless—

8 (1) expressly authorized by statute and within its
9 lawful jurisdiction;

10 (2) through regularly authorized representatives
11 for authorized purposes;

12 (3) without infringing rights of personal privacy;

13 (4) without disturbing private occupation or en-
14 terprise beyond the reasonable requirements of law
15 enforcement; and

16 (5) substantially necessary to the operation of the
17 agency.

18 SUBPENAS

19 (d) Every agency shall issue subpoenas authorized by
20 law to private parties upon request and, as may be required
21 by its general rules of procedure, upon a simple statement
22 of the general purpose or reasonable scope of the testimony
23 or other evidence so sought; and the names of witnesses and
24 the purpose and nature of the evidence so sought shall not
25 be made available to agency prosecutors or investigators.

1 Upon contest of the validity of any administrative subpoena
2 or upon the attempted enforcement thereof, the court shall
3 determine all questions of law raised by the parties, including
4 the authority or jurisdiction of the agency in law or fact,
5 and shall enforce (by the issuance of a judicial order requir-
6 ing the future production of evidence under penalty of pun-
7 ishment for contempt in case of contumacious failure to do
8 so) or refuse to enforce such subpoena accordingly.

9 APPEARANCE

10 (e) Every agency shall accord every person subject to
11 administrative authority and every party or intervenor (in-
12 cluding individuals, partnerships, corporations, associations,
13 or public or private agencies or organizations of any char-
14 acter) in any administrative proceeding or in connection with
15 any administrative authority—

16 (1) the right at all reasonable times to appear in
17 person or by counsel;

18 (2) every reasonable opportunity and facility for
19 negotiation, information, adjustment, or formal or infor-
20 mal determination of any issue, request, or controversy;

21 (3) the right to be accompanied and advised by
22 counsel; and

23 (4) a prompt determination of any matter within
24 the jurisdiction or competence of the agency:

25 *Provided, however,* That no such person or party shall in

1 any manner be made to suffer, through the subsequent
 2 exercise of administrative powers or otherwise, the conse-
 3 quences of any unwarranted or avoidable administrative
 4 delay in determining any such matter. In all cases in which
 5 an administrative hearing is required by law and the parties
 6 are not in default, matters not susceptible of informal dis-
 7 position in whole or in part shall be promptly heard and de-
 8 cided, except that in fixing the times and places for formal
 9 or informal proceedings due regard shall be had for the
 10 convenience and necessity of the parties or their representa-
 11 tives.

12 JUDICIAL REVIEW

13 SEC. 4. In order that every reviewing court shall have
 14 plenary authority to render such decision and grant such
 15 relief as right and justice may demand in full conformity
 16 with this Act and all other applicable law—

17 RIGHT OF REVIEW

18 (a) Notwithstanding any contract, agreement, or under-
 19 taking to the contrary, any party subject to, or adversely
 20 affected by, any administrative action, rule, or order within
 21 the purview of this Act or otherwise presenting any issue
 22 of law shall be entitled to judicial review thereof—

23 (1) as an incident to proceedings for any form
 24 of criminal or civil enforcement;

1 (2) through any special statutory review proceeding
2 relevant to the subject matter; or

3 (3) in the absence or inadequacy of any relevant
4 statutory review procedure, through any applicable form
5 of legal action, including actions for declaratory judg-
6 ment or for writs of injunction, mandamus, or habeas
7 corpus:

8 *Provided, however,* That any final administrative order (in-
9 cluding those upon applications for declaratory rulings or
10 the neglect, failure, or refusal of any agency to act upon
11 any application for a rule, order, permission, or the amend-
12 ment or modification thereof within the time prescribed by
13 law or within a reasonable time) directing action, assessing
14 penalties, prohibiting conduct, affecting rights or property,
15 or denying in whole or in part claimed rights, remedies,
16 privileges, licenses, permissions, moneys, or benefits under
17 the Constitution, statutes, or other law of the land shall
18 be subject to review pursuant to this section. Any pre-
19 liminary or intermediate order shall be directly reviewable
20 in any case in which no other judicial remedy is fully ade-
21 quate. All orders not directly reviewable shall be subject to
22 review upon the review of final acts, rules, or orders. Any
23 action, rule, or order shall be final for purposes of the
24 review guaranteed by this section notwithstanding that no

1 petition for rehearing, reconsideration, reopening, or declara-
2 tory ruling has been presented to or ruled upon by the
3 agency involved.

4 INTERIM RELIEF

5 (c) Unless the agency of its own motion or on request
6 shall postpone the effective date of any action, rule, or order
7 pending judicial review, every reviewing court, and every
8 court to which a case may be taken on appeal from or upon
9 application for certiorari or other writ to, a reviewing court.
10 shall—

11 (1) have full authority to issue all necessary and
12 appropriate writs, restraining or stay orders, or prelim-
13 inary or temporary injunctions, mandatory or otherwise,
14 required in the judgment of such court to preserve the
15 status or rights of the parties pending full review and
16 determination as provided in this section;

17 (2) postpone the effective date of any adminis-
18 trative action, rule, or order to the extent necessary to
19 accord the parties a fair opportunity for judicial review
20 of any substantial question of law; and

21 (3) grant such affirmative relief, notwithstanding
22 statutory or other administrative authority in the
23 premises, in any case in which any legal right, privilege,
24 immunity, permission, relief, or benefit expires or is

denied, withdrawn, or withheld, in whole or in part, to the extent necessary to preserve the status of the parties pending the review guaranteed by this section.

SCOPE OF REVIEW

(d) The reviewing court shall consider and decide all relevant questions of law arising upon the whole record; and the court shall hold unlawful any act or set aside any application, rule, order, or administrative finding or conclusion made, sanction or requirement imposed, or permission or benefit withheld to the extent that it finds them—

(1) inconsistent with any requirement of this Act;

(2) contrary to constitutional right, power, privilege or immunity;

(3) in excess of statutory authority, jurisdiction, or limitations or short of statutory right, grant, privilege, or benefit;

(4) made or issued without full observance of all procedures required by law;

(5) unsupported by substantial, credible, and material evidence upon the whole administrative record in any case in which the action, rule, or order is required by statute to be taken, made, or issued after administrative hearing;

(6) unwarranted by the facts to the extent that

1 the facts are subject to trial de novo by the reviewing
2 court; or

3 (7) arbitrary or capricious.

4 APPEALS

5 (e) The judgments of original courts of review shall
6 be appealable in accordance with existing provisions of law
7 and, in cases in which there is no appeal thereto as of right
8 and probable ground appears that any person has been denied
9 the full benefit of this Act, reviewable by the Supreme Court
10 upon writs of certiorari.

11 OTHER PROVISIONS OF LAW

12 (f) All provisions or additional requirements of law
13 applicable to the judicial review of acts, rules, or orders gen-
14 erally or of particular agencies or subject matter, except as
15 the same may be inconsistent with the provisions of this
16 Act, shall remain valid and binding as shall all statutory pro-
17 visions expressly precluding judicial review or prescribing
18 broader scope or availability of review than that provided
19 in this section.

20 SEPARATION OF PROSECUTING FUNCTIONS

21 SEC. 5. In order that no head, member, officer, em-
22 ployee, or agent of any agency shall serve both as prosecu-
23 tor and deciding authority—

24 (a) No proceeding, rule, or order subject to the re-
25 quirements of section 6 shall be lawful unless with reference

1 to that type of proceeding the agency involved shall have
2 previously and completely delegated either to one or more
3 of its responsible officers or to one or more of its members
4 all investigative and prosecuting functions (over which no
5 hearing or deciding officer shall thereafter have exercised
6 any control or supervision) and the officers or members so
7 designated shall have had no part in the decision or review
8 of such cases; and, in any agency in which the ultimate
9 authority is vested in one person, such individual shall also
10 delegate the hearing and initial decision of such cases to
11 examiners or boards of examiners.

12 (b) In the making of rules or consideration of petitions
13 subject to the requirements of section 5, no subordinate officer
14 or employee exercising or supervising investigative or prose-
15 cuting functions shall take any part in the decision as to the
16 form or contents of any rule or the acceptance or rejection
17 of such petitions.

18 (c) Every general delegation and separation of func-
19 tions required of any agency by this section shall be speci-
20 fically provided in its rules published pursuant to section 1:
21 *Provided, however,* That in any complaint or other paper the
22 agency may appear in name as the moving party; and noth-
23 ing in this section shall be taken to prevent the supervision,
24 consideration, or acceptance of settlements or adjustments by
25 hearing or deciding officers.

RULE MAKING

2 SEC. 6. Except to the extent that there is directly
3 involved any military, naval, or diplomatic function of the
4 United States—

NOTICE

6 (a) Every agency shall publish general notice of pro-
7 posed rule making including—

(1) a statement of the time, place, and nature of
any available public rule making procedures;

(2) full and specific reference to the authority
under which the rule is proposed; and

(3) a description of the subjects and issues involved:

14 *Provided, however,* That this subsection shall not be manda-
15 tory as to interpretative rules, general statements of policy,
16 or rules of agency organization or procedure and shall not
17 apply in cases in which notice is impracticable because of
18 unavoidable lack of time or other emergency affecting public
19 safety or health.

PROCEDURES

(b) In all cases in which notice of rule making is required pursuant to subsection (a) of this section or otherwise, the agency shall afford interested parties an adequate opportunity, reflected in its published rules of procedure, to

1 participate in the formulation of the proposed rule or rules
2 through—

3 (1) submission of written data or views;

4 (2) attendance at conferences or consultations; or

5 (3) presentation of facts or argument at informal
6 hearings:

7 *Provided, however,* That, in place of the foregoing provisions
8 of this subsection, in all cases in which rules are required by
9 statute to be issued only after a hearing, the hearing and
10 decision requirements of sections 7 and 8 shall apply. In
11 all other rule-making procedures parties unable to be present
12 shall be entitled as of right to submit written data or argu-
13 ments, all submissions shall be given full consideration by
14 the agency, and the reasons as well as findings and con-
15 clusions of the agency as to all relevant issues shall be
16 published upon the issuance or rejection of the rules or
17 proposals involved. Nothing in this section shall be held
18 to limit or repeal additional requirements imposed by law.

19 PETITIONS

20 (c) Every agency authorized to issue rules shall accord
21 any interested person the right to petition for the issuance,
22 amendment, or rescission of any rule in conformity with ade-
23 quate published procedures for the submission and prompt
24 consideration and disposition of such requests.

ADJUDICATION

2 SEC. 7. In every case of administrative adjudication in
3 which the rights, duties, obligations, privileges, benefits, or
4 other legal relations of any person are required by statute to
5 be determined only after opportunity for an administrative
6 hearing, except to the extent that there is directly involved
7 any matter subject to a subsequent trial of the law and the
8 facts de novo in any court—

NOTICE

(a) Every agency undertaking the adjudication of any case shall serve notice in writing upon all parties directly affected, specifying—

13 (1) the time, place, and nature of available admin-
14 istrative proceedings;

15 (2) the particular legal authority and jurisdiction
16 under which the proposed proceeding is to be had; and

17 (3) the matters of fact and law in issue:

18 *Provided, however,* That the statement of issues of fact in
19 the words of the authority under which the agency is pro-
20 ceeding shall not be compliance with this requirement.

PROCEDURE

(b) In every case in which notice is required the agency shall afford all interested parties the right and benefit of fair procedure for the settlement or adjudication of all relevant issues through (1) an adequate opportunity for

1 the informal submission and full consideration of facts, claims,
2 argument, offers of settlement, or proposals, of adjustment
3 and (2) thereafter, to the extent that the parties are unable
4 to so determine any controversy by consent, formal hearing,
5 and decision in conformity with sections 7 and 8.

6 DECLARATORY RULINGS

7 (c) Upon the petition of any proper party and in con-
8 formity with this section, every agency shall, except in tax
9 and patent matters, make and issue declaratory rulings to
10 terminate a controversy or to remove uncertainty as to the
11 validity or application of any administrative authority, rule,
12 or order with the same effect and subject to the same judicial
13 review as in the case of other rules or orders of the agency.

14 HEARINGS

15 SEC. 8. No administrative procedure shall satisfy the
16 requirement of a hearing pursuant to sections 5 or 6 unless—

17 PRESIDING OFFICERS

18 (a) To insure the impartiality of hearing or deciding
19 officers—

20 (1) the case shall be heard—

21 (A) by the ultimate authority of the agency

22 or by

23 (B) one or more subordinate hearing officers
24 designated by the agency from members of the

1 board or body which comprises the highest
2 authority therein,

3 (C) State representatives authorized by statute
4 to preside at the taking of evidence, or

5 (D) examiners who shall perform no other
6 duties, shall be removable only after hearing for
7 good cause shown, and shall receive a fixed salary
8 not subject to change: *Provided, however,* That in
9 the event hearing or deciding officers are no longer
10 in office or are unavailable because of death, illness,
11 or suspension, other such officers may be substituted
12 in the sound discretion of the agency at any stage
13 of proceedings required by this section and sec-
14 tion 8;

15 (2) the functions of all hearing officers, as well
16 as of those participating in decisions in conformity with
17 section 8, shall be conducted in an impartial and
18 considerate manner, in accord with the requirements of
19 this Act, with due regard for the rights of all parties as
20 well as the facts and the law, and consistent with the
21 orderly and prompt dispatch of proceedings;

22 (3) such officers, except to the extent required for
23 the disposition of ex parte matters authorized by law,
24 shall not engage in interviews with, or receive evidence
25 or argument from, any party directly or indirectly

1 except upon opportunity for all other parties to be
2 present and in accord with the public procedures author-
3 ized by this section and section 8. Copies of all com-
4 munications with such officers by, respecting, or on
5 behalf of any party or case shall be served upon all
6 the parties;

7 (4) upon the filing of a timely affidavit of per-
8 sonal bias, disqualification, or conduct contrary to law
9 of any such officer at any stage of proceedings, the
10 agency or another such officer, after hearing the facts,
11 shall make findings, conclusions, and a decision as to
12 such disqualification which shall become a part of the
13 record in the case and be reviewable in conformity
14 with section 3.

15 EVIDENCE

16 (b) To assure that administrative decision shall be
17 made upon a basis of fact—

18 (1) the principles of relevancy, materiality, proba-
19 tive force, and substantiality as recognized in Federal
20 judicial proceedings of an equitable nature shall govern
21 the proof, decision, and judicial review of all questions
22 of fact;

23 (2) the character and conduct of every person or
24 enterprise shall be presumed lawful until the contrary
25 shall have been shown by competent evidence;

(3) in every case in which the burden of proof is upon private parties to show right or entitlement to exceptions, privileges, permits, or benefits their competent evidence to that effect shall be presumed true unless affirmatively disproved by other evidence;

6 (4) every party shall have the right of cross ex-
7 amination and the submission of rebuttal evidence;

8 (5) the taking of official notice shall be unlawful
9 unless of a matter of generally recognized or scientific
10 fact of established character and unless the parties, be-
11 fore the decision becomes effective, are accorded an
12 adequate opportunity to show the contrary by evidence;

(6) no sanction, prohibition, or requirement shall be imposed or grant, license, permission, or benefit withheld in whole or in part except upon evidence which on the whole record is competent, credible, substantial, and material.

18 RECORD

(d) The transcript of testimony adduced and exhibits admitted, together with all pleadings, exceptions, motions, requests, and papers filed by the parties, other than separately presented briefs or arguments of law, shall constitute the complete and exclusive record and be made available to all the parties.

DECISIONS

SEC. 9. In all cases in which an administrative hearing is required to be conducted in conformity with section 7—

INTERMEDIATE REPORTS

(a) Unless the officer or officers who presided at the hearing also decide the case, they shall prepare and serve upon all parties and deciding officers an intermediate report of specific recommended findings of fact and conclusions of fact and law upon all relevant issues presented by the whole record.

SUBMISSIONS

(b) Officers who prepare intermediate reports or decide cases shall, prior to the preparation of such reports or decision of cases, afford all parties full opportunity for the submission of briefs, exceptions to any intermediate report, proposed findings or conclusions, and oral argument.

CONSIDERATION OF CASES

(c) All issues of fact shall be considered and determined exclusively upon the record made in conformity with section 7. In the formulation and submission of intermediate reports or in the decision of any case, all hearing or deciding officers shall personally consider the whole or such parts of the record as are cited by the parties, with no other aid than that of clerks or assistants who perform no other duties:

1 and no such officer, clerk, or assistant shall consult with
2 or receive oral or written comment, advice, data, or recom-
3 mendations respecting any such case from other officers or
4 employees of the agency or from third parties.

5 FINDINGS AND OPINIONS

6 (d) All final decisions and determinations shall be
7 stated in writing and accompanied by a statement of reason,
8 findings, and conclusions upon all relevant issues of law,
9 fact, or discretion raised by the parties: *Provided, however,*
10 That the findings and conclusions in every case shall en-
11 compass all relevant facts of record and shall themselves be
12 relevant to, and shall adequately support. the decision and
13 order or award entered.

14 EFFECTIVE DATE

15 SEC. 10. This Act shall take effect ninety days after its
16 approval: *Provided, however,* That no procedural require-
17 ment shall be mandatory as to any administrative proceeding
18 formally initiated or completed prior to such date.

79TH CONGRESS
1ST SESSION

H. R. 2602

A BILL

To facilitate the administration of government
and improve the quality of justice.

By Mr. GWYNNE

MARCH 13, 1945

Referred to the Committee on the Judiciary

ADMINISTRATIVE PROCEDURE

HEARINGS BEFORE THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES SEVENTY-NINTH CONGRESS FIRST SESSION

ON THE SUBJECT OF
FEDERAL ADMINISTRATIVE PROCEDURE
AND ON THE FOLLOWING BILLS

H. R. 184, H. R. 339, H. R. 1117, H. R. 1203
H. R. 1206, and H. R. 2602

JUNE 21, 25, AND 26, 1945

Serial No. 19

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ADMINISTRATIVE PROCEDURE

THURSDAY, JUNE 21, 1945

HOUSE OF REPRESENTATIVE,
COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The committee met at 10 a. m., Hon. Hatton W. Sumners (chairman) presiding.

The CHAIRMAN. The committee will come to order at least for the purpose of straightening out in a preliminary way our procedure.

Mr. McFarland, I believe you are going to have some responsibility for the presentation in order of the views of yourself and your group who have had much responsibility and rendered much service in the drafting, for consideration of the committee, of the matters that are to be considered today.

Several bills have been introduced and are now pending in this committee dealing with this important subject matter. As I indicated to you a moment ago and will state now, if we get the discussion in some order dealing with this subject matter, it will materially shorten the hearing. I suppose you want to make some introductory statement about the need, in the judgment of its proponents, of this proposed legislation. It seems to me it would then fall under some general subheadings.

First, you would deal, I suppose, with the formation of the directives, giving us the benefit of your judgment as to how those directives are to be formulated and what opportunity the people who are to be affected by them have of presenting their views with regard to what those directives should be.

Then it seems to me perhaps the next thing of importance would be a suggestion as to what agency and how it should be created for hearing the matters in dispute; then the general machinery on up through the structure of the Department, the right of appeal to the court, what questions would be subject to review in the court; whether or not there would be any de novo trial in any circumstances.

I hope you will understand the indications of the chairman do not convey any certainty of judgment on his part. He has certainly no disposition to limit or even direct the proceedings. There are going to be some other members of the committee here soon. Unfortunately, this committee, as is true of many of the committees of the House, is considerably disorganized now by reason of the draft which has been made upon its membership to constitute other committees dealing with specific matters. I think, however, we have the real brains of the committee here now and it would save some time if you proceed.

All right, Mr. McFarland.

Mr. McFarland. Mr. Chairman, Mr. Simmons will introduce the subject for our group; then will be followed by Mr. Miller, and then by myself, if necessary.

STATEMENT OF DAVID A. SIMMONS, PRESIDENT, AMERICAN BAR ASSOCIATION

Mr. SIMMONS. My name is David A. Simmons, from Houston, Tex.

Mr. Chairman and gentlemen of the committee, I appear here as president of the American Bar Association. For the record, I might say that for 5 years before that I was president of the American Judicature Society, a group of 6,500 lawyers and judges throughout the country who dedicate their spare time to the improvement in the judicial administrative process. Before that I was president of the Texas Bar Association, of the Houston bar and, in my private practice, am a member of a small law firm in a middle-sized city. I might perhaps call myself a country lawyer. I find that is a little unusual in the membership of the American Bar Association; but at least it is current in Government practice.

I have served as first assistant attorney general of Texas; assistant United States district attorney under the Wilson administration in south Texas, and have represented a number of administrative bodies and boards in Texas and in my community.

I have a short statement introductory of this subject and in order, lawyerlike, that I may not get off on too many other subjects, having just come from 7 weeks at San Francisco as a consultant of the State Department, where I helped to "revise and reorganize the world," with your permission I will restrict myself to this short statement.

It is not my purpose to review in detail the several proposals now before you nor to dwell upon the objectives of particular provisions. Mr. Clarence A. Miller—who is a former president of the Interstate Commerce Commission Practitioners, former chairman of the Section on Administrative Law of the District of Columbia Bar Association, and presently chairman of the American Bar Association's Committee on Administrative Law for the District of Columbia—will present to you the history of the proposals and the basis for the provisions therein. I think I can say, however, that the measures which are now before you are parts of an unbroken chain of development in which a thoroughly democratic process is evident. Every branch of the legal profession has participated. Lawyers, judges, and administrators have been members of the committees which have made valuable contributions and constructive suggestions.

These bills—and particularly H. R. 1203 with some modifications which I shall presently mention—mark the culmination of more than 10 years of consideration, studies, reports, and recommendations by various public and private bodies. Beginning in 1933 a committee of the American Bar Association proposed the creation of a special administrative court. In 1937 the President of the United States recommended a reorganization of the Federal executive branch upon the ground that the present form of administrative tribunal, which performs "administrative work in addition to judicial work, threatens to develop a 'fourth branch' of the Government for which there is no sanction in the Constitution." These proposals were succeeded

by a proposed administrative procedure act known generally as the Walter-Logan bill. The latter was passed by Congress, but vetoed by the President to await the conclusion of studies and the report of a committee—composed of Government officers, judges, and lawyers—appointed to study the subject. The so-called Attorney General's Committee on Administrative Procedure made its report early in 1941. Thereafter a subcommittee of the Senate Judiciary Committee held extensive hearings, but suspended consideration with the imminence of war. During the past 2 years there has been a marked revival of interest which has been directed toward two related objectives:

I wish to interpolate here that in the last year I have, as president of the American Bar Association, had to go in every corner of the country and I find everywhere the greatest interest, Mr. Chairman and gentlemen, in these bills and in this subject matter. I think I can say without fear of contradiction and without being an advocate about it but merely a spokesman for the bar that there is very great interest and very great hope that something will be done which is constructive, and at no long-distant date, on this subject. I find that sentiment in the smallest hamlets. I believe the feeling is more urgent among the lawyers in the smaller States and country districts among the people generally. I do not limit it to lawyers, although I stand here only as spokesman for the lawyers.

As I say, during the past 2 years there has been a marked revival of interest which has been directed toward two related objectives:

First, the adoption of a general administrative procedure statute. Secondly, the more specific definition of administrative powers as individual pieces of legislation involving administrative agencies come before Congress for adoption, revision, or renewal.

Practically all of these bills have three basic features, although they differ in language and detail. Those features are—

1. Provision for publicity of administrative law and procedure. I need not tell this committee of the confusion in that field.

2. A statement of the minimum procedural requirements of the two basic types of administrative operations—that is, (a) the making of general regulations, and (b) the adjudication of particular cases.

3. A simplified statement of the right, procedure, and scope of judicial review.

The purpose of these is threefold: (1) to simplify the subject; (2) to state minimum standards; and (3) to notify the citizen so that the mystery may be removed from the American system so far as administrative agencies are concerned.

Since no one desires to injure the legitimate operations of government, there is no reason why the provisions of any bill adopted should not bring general acceptance and approval. As evidence of this fact, the Senate Judiciary Committee has recently issued a print in which certain suggestions are made as the result of extended conferences between the representatives of the Attorney General and other parties. I understand that an agent of the Attorney General is or will be here to discuss the matter. Mr. Carl McFarland, who was formerly an Assistant Attorney General of the United States, a member of the Attorney General's Committee on Administrative Pro-

cedure, and is now the chairman of the American Bar Association's administrative law activities, will present for you a discussion of the suggested draft developed in cooperation with the representatives of the Attorney General at the suggestion of the chairman of the Senate Judiciary Committee as well as the way in which the detailed provisions of the proposed bills reflect the basic recommendations of the Attorney General's Committee on Administrative Procedure.

The one matter upon which no printed document reveals common agreement is the appointment of hearing officers for administrative cases. In that respect three different proposals have been made, as follows:

First is the suggestion that they be appointed and removed within the usual framework of the public service, which means the civil-service system.

Second is the proposal for an office of administrative procedure, headed by Presidential appointees, to make or approve appointments and removals of examiners as well as to exercise general supervisory and research powers.

Third is a suggestion that the Judicial Conference appoint an officer to appoint and remove examiners. This suggestion is attractive, but may present constitutional problems as to the appointing power. Perhaps a solution would be for the Presidential appointment of such an officer or officers, with provision for the Judicial Conference to make recommendations to the President.

Now we have a suggestion that we want to leave for your consideration as to, perhaps, a joint legislative committee.

Legislation of the character we are discussing is designed, as I have said, merely to simplify the law, lay down minimum standards, and notify the citizen of his procedural rights. It provides no code of procedure and leaves many vital matters untouched. But, more important, it does not touch at all the more serious problem of making the substantive powers of administrative officers more specific. Indeed, there is so much that needs to be done in this field that any statute such as is here pending is but a start.

Some means must be found for Congress itself to exercise continuing supervision and improvement in the matter of administrative justice. To that end, it is suggested that there ought to be provided—preferably in any bill which this committee may report and as an addition to the subjects now proposed to be contained in it—a joint committee on administrative law and procedure. That committee should have an adequate staff. It should operate like the Joint Committee on Taxation. It should engage in the drafting of legislation conferring administrative powers. It should conduct investigations. It should make recommendations for further procedural legislation.

I wish to do no more at this time than to leave this thought with you. We need an administrative procedure act, but it is only a beginning. In order that it may not be a stopping point, our suggestion is that means be provided in any bill reported whereby continuing improvements may be made.

Now, to that written statement, with your permission, I will add just one thought. I have gone about this country this year, as president of the American Bar Association and as an ordinary lawyer from the Southwest, talking to people in every walk of life. I find there is

great interest in the matter of governmental reorganization, in which this is merely one part, and in the years that I have given of my life to talking with people of America on these subjects I find that next to the war itself at the moment this is the most interesting subject to them of a political nature. And I have had occasion to make several speeches. The distinguished chairman and I spoke over the same national radio program in New York last winter on a subject related to this and I had correspondence from all over the country. May I suggest that we give, as citizens and as members of the legislative branch, a great deal more thought to the subject of the three divisions of government.

I am not going to make a speech. My 1-hour speech is printed in the American Bar Association Journal of February. It has received some favorable comment in every State of the Union and has been reprinted and scattered broadcast. The basic thought that impressed people was this, that the Congress is the legislative branch of our Government—it is the one elected by the people—it is the one the people must rely on and we do not any longer want Congress to set up bureaus and commissions and say to them: “We recognize there is a great problem in this particular field. We have not the time to solve this problem as we did in the early days of this Republic; we are going merely to set up a commission of some kind and give you full powers, and you endeavor to solve that problem.” The people of America, insofar as I have been able to determine, desire that the Congress set up its own agencies. The appropriation for Congress is a mere pittance. I have gone about this country pointing out that your appropriation for the current year was only \$13,000,000 for salaries and expenses—10 cents a head for all the people of America. You did not know, I suppose, that you had a spokesman in the president of the American Bar Association this year urging and telling the people that Congress must be given more funds; yes, salary, too—I am for that. But you have to set up an establishment here sufficient to run a nation of 136,000,000 people and if it costs the people of America \$1 a head to run the congressional establishment, Mr. Chairman and gentlemen, the people are willing to have it done.

When I read that you have an Office of Legislative Counsel with an appropriation of \$82,000 to help you draft your bills, I personally feel you should have a staff adequate and equal to that of any department of the Government. I say that is ridiculous, because this is the department of Government that represents the people of America.

You see, it would be easy to get me started on that, and I will merely stop the statement where I began. In this paper I have submitted that this is a step in the right direction.

The CHAIRMAN. Before you take your seat, I want personally to express my appreciation to you as president of the American Bar Association this year, and I see another very prominent man over there who has been doing the same thing; that is, while you were making these speeches, you also have been telling the people they have to take back in the States and small communities some of these powers concentrated here so that we can operate this country under laws passed by Congress, and directives.

Mr. SIMMONS. That is right.

The CHAIRMAN. I have been saying for a good while you are either going to have to do that or you are going to have to go ahead and establish these great organizations of considerable size around Members of Congress and wind up with 500 or 600 other bureaus, and the Congressman will be in the center of it and he won't know much about what the folks are doing under it.

Mr. SIMMONS. I agree with you and will be glad at some time to discuss that with you over a national radio chain.

**STATEMENT OF C. A. MILLER, WASHINGTON, D. C., CHAIRMAN,
AMERICAN BAR ASSOCIATION COMMITTEE ON ADMINISTRATIVE
LAW FOR THE DISTRICT OF COLUMBIA**

Mr. MILLER. Mr. Chairman and gentlemen of the committee, as Mr. McFarland said, I am going to take up where the president of the American Bar Association left off.

The CHAIRMAN. I believe it would be a good idea for you to identify yourself, first.

Mr. MILLER. My name is C. A. Miller; my office is 1120 Tower Building, Washington, D. C. By way of identification and some qualification, perhaps I should say at the present time I am vice president and general counsel of the American Short Line Railroad Association. I mean by that that is the source from which I obtain my compensation.

I am here as the chairman of the American Bar Association committee on administrative law for the District of Columbia.

I have been, as the president of the American Bar Association said, a past president or am a past president of the Association of Interstate Commerce Commission Practitioners. I was a member of the committee that cooperated with the Interstate Commerce Commission's committee in revising the general rules of practice of the Interstate Commerce Commission in 1941 and 1942; I was also a member of the committee that revised the rules of practice of the Public Utilities Commission of the District of Columbia which were adopted in 1942.

So far as my experience is concerned, I should say, in the field of administrative law, it began about 25 years ago when I became a member of Mr. Beaman's staff in the office of what now is the Legislative Counsel Service. Mr. Beaman and Mr. Law, with whom most of you gentlemen are acquainted, were my original preceptors and instructors in the field of administrative law. Since that time, however, my experience has been mostly as a practitioner before the administrative agencies of the Government specializing in particular before the Interstate Commerce Commission.

In making this statement, I think I should say to you gentlemen I appear here solely as the representative of the American Bar Association, although our own Short Line Association has endorsed and is in favor of an administrative law bill.

Your committee has before it, Mr. Chairman, six bills; namely, H. R. 184, the so-called Celler bill; H. R. 339 and H. R. 1117, identical bills, which we style the Smith-Cravens bill; H. R. 1203, the Sumners bill, which is generally known throughout the country as the McCarran-Sumners bill; H. R. 1206, the Walter bill, and H. R. 2602, the Gwynne bill.

I assume, Mr. Chairman, it is the purpose and intent of the chairman to have these bills made a part of the record of this hearing?

The CHAIRMAN. I do not know as to whether we will make them a part of the record or not, but I believe it would be helpful if you would discuss the general subject matter as distinguished, at this time, from discussing the provisions of the particular bills. (The bills appear in the appendix.)

Mr. MILLER. That is what I propose to do. I may say to you, Mr. Chairman, in such preparation as we could make for this hearing, our idea was it should be as flexible as it could be made so as to meet the desires of the committee to the extent possible; at the same time to be as helpful to the committee as possible without being too lengthy in our presentation. For that reason, I have had prepared and there is before each of you gentlemen a mimeographed document captioned "Summary of salient features of administrative procedure bills pending before the Committee on the Judiciary, House of Representatives, United States." In the summary statement I take up each of the bills in their numerical order and very briefly summarize what we consider to be the salient features of those bills.

A very cursory examination of that statement will indicate to you gentlemen that, by and large, the bills cover the same general territory. There are differences in the details of them and in the approach, but I believe no good purpose would be served by my going into any elaborate description of the salient features of these various bills at this time.

The CHAIRMAN. I think you are right.

Mr. MILLER. I think the document presented to you will serve the purpose of shortening the hearing as much as possible. The chairman can, of course, have that statement incorporated in the record if he wishes; or, if not, as may suit the convenience of the committee.

The CHAIRMAN. We will be very glad to incorporate that in the record, Mr. Miller.

(The matter above referred to is as follows:)

**SUMMARY STATEMENT OF SALIENT FEATURES OF ADMINISTRATIVE PROCEDURE BILLS
PENDING BEFORE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES,
UNITED STATES, JUNE 21, 1945**

(H. R. 184, Celler bill; H. R. 339 and H. R. 1117, Smith-Cravens bills; H. R. 1203, Sumners bill; H. R. 1206, Walter bill; H. R. 2602, Gwynne bill)

H. R. 184—CELLER BILL

I. DECLARATION OF GENERAL POLICY

1. All administrative authority should be effected by established procedures designed to assure adequate protection of private interests and to effectuate declared policies of Congress.

2. All procedures should be made known to all interested persons.

3. Adjudication should include due notice, opportunity to be heard, and prompt decision.

II. DELEGATION OF AUTHORITY

Provision is made for delegation of authority to subordinates.

III. OFFICE OF FEDERAL ADMINISTRATIVE PROCEDURE

1. Director of Federal Administrative Procedure, to be appointed by President, by and with advice and consent of Senate.

2. Office of Federal Administrative Procedure:

- (a) Director.
- (b) Justice of the United States Court of Appeals, District of Columbia.
- (c) Director of Administrative Office of United States Courts.
- (d) Advisory Committees.

3. Duties of Director:

- (a) Investigate agency practices and procedures.
- (b) Recommend uniform procedures.
- (c) Investigate complaints regarding procedures.
- (d) Examine practices respecting publicity.
- (e) Investigate admissions to practice.
- (f) Act, with members of Office, respecting appointment and removal of hearing commissioners.
- (g) Submit annual report.

IV. RULES AND RULE MAKING

- 1. Publication of internal organization of agencies required.
- 2. Publication of policies, interpretations, and rules required.
- 3. Provision for receipt of suggestions for rules required.
- 4. Retroactivity of effect of rules prohibited.
- 5. Provision is made for requesting amendments of rules.

V. ADJUDICATION

(Applicable where hearing accorded by statute)

1. Hearing commissioners:

- (a) Nominated by agency and appointed by Director OFAP.
- (b) Term, 7 years.
- (c) Removable, for cause after hearing.
- (d) Powers and duties are prescribed.

2. Hearing of cases:

- (a) Presiding officer, a hearing commissioner.
- (b) Powers and duties of hearing commissioner prescribed.
- (c) Provision made for cases of disobedience of lawful orders.
- (d) Prehearing conferences authorized.
- (e) Provision made for briefs, argument, requested findings, etc.
- (f) Provision is made for disqualification of hearing commissioner.

3. Decision of cases:

- (a) Decision of hearing commissioner final unless appealed to agency.
- (b) Provision is made for reopening of decisions not appealed.
- (c) Provision is made for appeal of hearing commissioner's decision.

VI. APPEAL TO COURTS

- 1. Content of record on appeal to courts is prescribed.
- 2. Mistake of remedy is not to preclude judicial review.

VII. DECLARATORY RULINGS

Provision is made for declaratory rulings.

H. R. 339 AND H. R. 1117—SMITH-CRAVENS BILL

(Military, naval, and diplomatic functions excepted from all requirements)

I. RULES

Every agency required to publish—

- (a) Descriptions of internal and field organization.
- (b) Method of channelization of functions.
- (c) Substantive regulations.

II. RULINGS AND ORDERS

Every agency required to publish—or make available—all general rulings, opinions, orders, etc.

III. RELEASES

Required to be filed with Division of Federal Register and be made available to public.

IV. ENFORCEMENT

1. No person to be prejudiced by failure to avail himself of anything not published as required.
2. Comptroller General to disallow expenditures of nonconforming agencies.

V. RULE MAKING

1. Notice of proposed rule making required.
2. Interested parties accorded opportunity to participate in formulation of rules.
3. Right to petition for change of rules is accorded.

VI. ADJUDICATION

(Where law now accords hearing)

1. Adequate notice of proceeding is required.
2. Adequate opportunity for full hearing prescribed.
3. Declaratory orders are provided for.

VII. APPEARANCES

1. Right of appearance in person or by counsel provided.
2. Right to advice by, and accompaniment of, counsel is provided.

VIII. INVESTIGATIONS

1. Limited to those authorized by law, within agency jurisdiction, and substantially necessary.
2. Required to be conducted so as not to disturb rights of personal privacy and to interfere as little as possible with private occupation or enterprise.

IX. SUBPENAS

1. Made available to private parties.
2. Provision is made for determining validity.

X. DENIALS

Prompt notice—and grounds therefore—required.

XI. RETROACTIVITY

Rules or orders not to become effective prior to publication or service, unless authorized by law.

XII. RECORDS

Matters of official record made available to interested parties.

XIII. HEARINGS

1. Presiding officers—Commissioners or Deputy Commissioners.
Three Commissioners appointed by President, with advice and consent of Senate, for terms of 12 years.
Deputy Commissioners appointed by Commissioners.
2. Powers of hearing officers prescribed in detail.
3. Rules of evidence are prescribed.
4. Record—consist prescribed.

XIV. DECISIONS

1. Opportunity for briefs, proposed findings, conclusions, and oral argument prescribed.
2. Order, award, etc., required to be made by hearing officer.
3. Appeal from decision of hearing officer to agency provided.
4. Decision required to be based upon the record.
5. Findings and determinations required to be in writing and served upon all parties.

XV. PENALTIES AND BENEFITS

1. Imposition of sanctions is strictly limited.
2. Licensing requirements are specifically safeguarded.

XVI. JUDICIAL REVIEW

1. Right of judicial review is accorded.
2. Form of action is prescribed.
3. Interim relief is provided.
4. Scope of review is prescribed.

XVII. SEPARATION OF FUNCTIONS

Complete separation of investigative and prosecuting functions from those of adjudication and rule making is required.

H. R. 1203—SUMNERS BILL

I. PRINCIPAL FEATURES

1. Publicity of administrative law and procedure.
2. Minimum procedural requirements for rule making and adjudication.
3. Specification and simplification of judicial review.
4. Statement of common incidental procedural rights pertaining to any kind of Executive authority.
5. Limitations upon types of penalties imposable by administrative agencies.
6. Bill applies to functions rather than agencies.
7. War agencies are exempt—except for publication of rules—also military, naval, or diplomatic functions requiring secrecy in the public interest.

II. PUBLICITY OF ADMINISTRATIVE LAW AND PROCEDURE

1. Agencies are required to publish—
 - (a) Descriptions of internal and field organizations.
 - (b) Statement of methods for channeling and determining matters handled.
 - (c) Rulings and orders.
 - (d) Final opinions.

III. RULE MAKING

1. Requires notice of proposed substantive rules and opportunity to be heard.
2. Requires publication of reasons and conclusions for rejection of proposed rules.
3. Affords opportunity for petition for issuance of rules, or changes therein.

IV. ADJUDICATION

(Where statute requires opportunity for hearing)

1. Requires adequate notice.
2. Requires opportunity for settlement by agreement.
3. Prohibits investigative or prosecuting employees from participating in decision or recommended decision.
4. Provides for declaratory orders.
5. Accords right of appearance—in person or by counsel.

V. INVESTIGATIONS

1. Limited to those authorized by law, and within jurisdiction of agency, and in interest of law enforcement.
2. Protects right of personal privilege or privacy.

VI. SUBPENAS

1. Requires subpoenas authorized by law to be issued to any party.
2. Accords court right to determine relevancy and jurisdiction, where validity of subpoena is questioned.

VII. DENIALS

1. Prompt notice is required where application, petition, or other request is denied in whole or in part.

VIII. PUBLIC RECORDS

1. Matters of official record are made available to interested parties—with certain exceptions.

IX. HEARINGS

(Applicable to rule making and required hearings)

1. Specification of presiding official is made.
2. Impartiality is required.
3. Provides for disqualification of hearing officer.

X. EXAMINERS

1. Requires each agency to appoint examiners, subject to civil-service rules.
2. Provides for survey of examiners' salaries by Civil Service Commission.
3. Provides for lend-leasing of examiners by agencies.

XI. HEARING PROCEDURE

1. Specifies burden of proceeding.
2. Provides presumption of legitimacy of conduct or action.
3. Gives right of cross-examination.
4. Prescribes admissibility of evidence—and action thereon.
5. Specifies consist of record.
6. Limits taking of official notice.

XII. DECISIONS

1. Provides for initial or recommended decisions.
2. Provides for final decisions.
3. Requires due process—and specifies it—before any decision is made.
4. Specifies content of decisions and recommended decisions.

XIII. SANCTIONS

1. Specifies limitations on sanctions.
2. Specifies conditions under which licenses shall be deemed granted.
3. Limits withdrawals, suspensions, revocations, and annulments of licenses.
4. Protects actions while license applications are pending.

XIV. PUBLICITY

1. Prohibits agencies from issuing publicity reflecting adversely upon any party or enterprise.

XV. JUDICIAL REVIEW

1. Does not give right of judicial review where none now exists.
2. Specifies form and venue of action.
3. Defines reviewable acts.
4. Provides interim relief.
5. Specifies scope of review.

H. R. 1206—WALTER BILL

I. DECLARATION OF GENERAL POLICY

1. Declares that powers of Government—exercised through administrative agencies—

- (a) Shall be conducted according to established procedures—
1. Assuring adequate protection.
 2. Assuring impartial conferring of benefits.

II. DELEGATION OF AUTHORITY

1. Provides for delegation of agency authority to subordinates, with agency responsibility for acts done, etc.
2. Requires publication of rules relating to delegations of authority.

III. APPEARANCES

1. Provides for appearances in person or authorized representatives.
2. Accords right of advice of counsel to persons summoned in any agency proceeding.

IV. ATTORNEYS AND AGENTS

1. Provides for suspensions or disbarments of practitioners.
2. Requirements for admission to practice, and maintenance of formal registers of attorneys or agents to be omitted when practicable.
3. Office of Administrative Procedure authorized to establish and maintain central method for registration or admission of attorneys and agents.
4. Except in Patent Office, attorneys in good standing in highest court of State or Territory, or in any Federal court, are eligible to practice.
5. Appearance by former employees of agency is limited.
6. Nonlawyers admissible under reasonable rules and regulations of agency.

V. INVESTIGATIONS

1. Investigations required to be conducted with least possible disruption of personal privacy, or private occupation or enterprise.
2. Reports required to be simplified as much as possible.
3. Specific limitations and admonitions are provided.

VI. SUBPENAS

1. To be issued only upon request and reasonable showing as to necessity, scope, etc.
2. To be issued to private parties as freely as to agencies.

VII. PUBLICITY

1. Matters of record (with certain exceptions) are made available to all interested persons.
2. Limits publicity of proceedings by agencies.

VIII. OFFICE OF FEDERAL ADMINISTRATIVE PROCEDURE

1. Director (learned in the law, or qualified by experience) appointed by President with advice and consent of Senate for term of 7 years.
2. Governed by Board—
 - (a) The Director.
 - (b) An Associate Justice of United States Court of Appeals for District of Columbia.
 - (c) Director of Administrative Office of United States Courts.
3. Duties are specified in detail.

IX. EFFECT AND ENFORCEMENT

1. Act in general to serve as guides and limitations.
2. Violation of mandatory provisions made subject to disciplinary action.

X. SUSPENSION OF PROVISIONS

1. Provisions of the act may be suspended by President—upon recommendation of an agency and OFAP.
2. Provision is made for termination of suspension by Congress.

XI. ADMINISTRATIVE RULES AND REGULATIONS

1. Declared policy—agencies shall issue rules, regulations, etc., as to organization and procedures.
2. Military, naval, diplomatic, and certain other functions excluded.
3. Standards for regulations are prescribed.
4. Receipt and consideration of suggestions for rules are provided for.
5. Notice of proposed rule-making is provided for.
6. Public rule-making procedures are prescribed.
7. Provision is made for judicial review of rules.
8. Declaratory judgments are provided for.
9. Scope of judicial review is prescribed.
10. Rulings in specific cases are not to serve as general rules.
11. Rules promulgated are to be transmitted to Congress annually.

XII. ADMINISTRATIVE ADJUDICATIONS

1. Due process is specifically prescribed.
2. Exception is made for military and diplomatic functions, and determinations triable de novo, and certain other activities.
3. Expedition of determinations is provided for.
4. Informal dispositions of controversies are provided for.
5. Declaratory rulings are prescribed, upon petition.
6. Requirements of formal procedures are specified in detail.
7. Complete segregation of prosecuting and adjudicatory functions is required.
8. Hearing commissioners are provided for, to be nominated by agency and appointed by OFAP.
9. Provision is made for disqualifying presiding officers.
10. Powers and duties of presiding officers are prescribed.
11. Prehearing conferences are provided for.
12. Rules of evidence are specified.
13. Provision is made for cross-examination.
14. Conditions of taking of official notice are prescribed.
15. Post hearing procedure—proposed reports, etc.—is detailed.
16. Procedure for reaching final determinations is detailed.
17. Rehearing, reopening, and reconsideration of decisions is provided for.

XIII. JUDICIAL REVIEW

Detailed provision is made for judicial review.

H. R. 2602—GWYNNE BILL

I. OBJECTS

1. Improve relations between private citizens and governmental authority.
2. Facilitate administration of justice.
3. Protect civil rights.
4. Preserve constitutional form of government.

II. PUBLIC INFORMATION

1. Publication of rules, including organization, in Federal Register, is required.
2. Agency rulings and orders are made available to public.
3. Releases are required to be filed with Division of Federal Register, and made available to public inspection.

III. PENALTIES AND BENEFITS

1. Imposition of sanctions is restricted.
2. Licensing requirements are restricted.
3. Exercise of investigative powers is limited.
4. Subpenas are made available to private parties.
5. Right of appearance in person or by counsel is prescribed.

IV. JUDICIAL REVIEW

1. Right of judicial review is prescribed.
2. Powers of courts on judicial review are specified.
3. Interim relief is provided.
4. Scope of judicial review is prescribed.

V. SEPARATION OF FUNCTIONS

Complete separation of prosecuting and adjudicatory functions is provided.

VI. RULE MAKING

1. Public notice is required.
2. Procedures are prescribed.
3. Provision is made for petitions for amendments, etc.

VII. ADJUDICATION

(Where hearing is required by statute)

1. Adequate notice is required.
2. Fair procedure is required.
3. Declaratory rulings are provided.
4. Hearings—
 - (a) By ultimate authority, or subordinate hearing officers.
 - (b) Evidence required to be in record.
 - (c) General rules of evidence are prescribed.
 - (d) Content of record is prescribed.
5. Decisions—
 - (a) Intermediate reports are provided.
 - (b) Briefs, argument, exceptions, etc., are provided.
 - (c) Decision based on record is required.
 - (d) Findings and determinations are required to be in writing, accompanied by reasons therefor.

Mr. MILLER. I have also prepared and had placed before your committee a chart which looks very much like a genealogical chart, and I would like to call your attention to that chart very briefly. It is headed at the top "Administrative law bills" and is a chart which shows all of the bills introduced in the Congress from the first bill on this general subject, back in the Seventy-third Congress, first session, which you will note was S. 1835 and was introduced by the great Senator Norris, "father of administrative procedure" as he is now called.

Then there was a succession of bills in the Congress down to and including the bill in the Seventy-sixth Congress known as the Logan-Wheeler bill, which is on that chart. In that column the committee will note that the thinking was on the basis of an administrative court. Then, during the Seventy-sixth Congress, S. 915 and H. R. 4236, also known as the Celler bill, changed that idea, got away from the idea

of an administrative court, so to speak, and went over to the subject of administrative procedure.

Mr. WALTER. I think that perhaps is due to the fact this committee in discussing generally the proposition decided we did not want any special courts.

Mr. MILLER. That is my recollection of about what happened. I think the folks who were considering that ultimately reached the conclusion it was not a workable idea.

My first purpose in presenting this chart to your committee is to show the change in the thinking on the subject; but another major purpose is to show the sequence of those bills and how they have developed. So you will find at the appropriate place I am showing where the Attorney General's Committee on Administrative Procedure intervened and I am also showing where the report on administrative management in the executive branch of the Government intervened in 1937.

That chart, Mr. Chairman, if you think it wise and worth while, may be incorporated in the record so far as I am concerned.

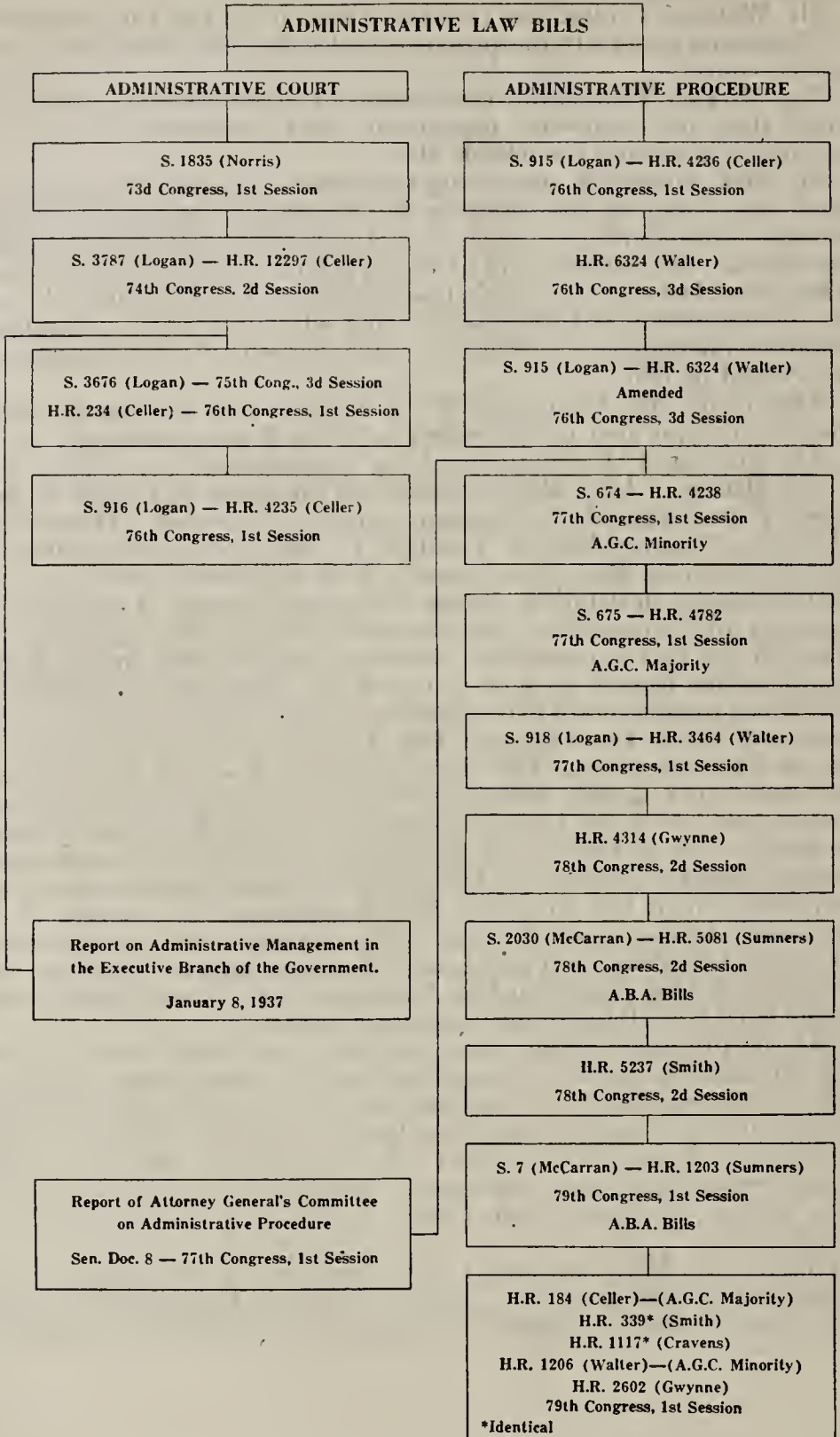
The CHAIRMAN. I think it should be incorporated.

Mr. MILLER. I have also prepared and am going to present to you another mimeographed statement which is entitled "History of McCarran-Sumners bills, S. 7 and H. R. 1203, with special reference to the American Bar Association." I do not intend either to read that statement in detail or discuss it in detail, because it was mimeographed and presented to you in order to avoid that very thing. I want to say to the committee, however, that this was prepared for your possible benefit to show you, first, the exhaustive consideration which has been given to this subject of reform of administrative procedure so far as the American Bar Association is concerned and so far as the congressional bills are concerned. You will find that this statement very largely coincides with the genealogical or diagrammatic chart which has been presented to you. That statement shows in detail—and all based upon matters of historical and documentary record—that this subject has been receiving consideration and serious consideration of the American Bar Association for a period of 12 or more years—at least 12 years. That statement will show to you, also, Mr. Chairman and gentlemen of the committee, that the consideration by the American Bar Association has followed pretty generally what we call today the democratic process.

As the president of the American Bar Association told you, this has not been the subject of consideration of a small group of people, but it has been receiving consideration of a large group of people within and without the American Bar Association, and every effort has been made to give the subject a thorough study. Whether or not sound results have been reached as a result of that study, of course, is a matter of opinion that I will not debate at this time, to say the least.

Here again, Mr. Chairman, I do not believe it is desirable that this statement be read in detail. I think, however, it might be well for the record to have it included at this point as a part of my statement,

(The matter above referred to is as follows:)



so that the historical background will be as complete as it is possible for me to make it.

The CHAIRMAN. That will be incorporated at this point.
(The matter above referred to is as follows:)

HISTORY OF McCARRAN-SUMNERS BILL (S. 7 AND H. R. 1203, 79TH CONG., 1ST SESS.)
TO IMPROVE THE ADMINISTRATION OF JUSTICE BY PRESCRIBING FAIR ADMINISTRATIVE PROCEDURE WITH SPECIAL REFERENCE TO AMERICAN BAR ASSOCIATION

(Prepared by C. A. Miller, Washington, D. C., January 31, 1945)

The McCarran-Sumners bill is the product of long study of administrative agencies, which have been defined as "something that looks like a court and acts like a court but somehow escapes being classified as a court whenever you attempt to impose any limitation on its power" (58 A. B. A. Rept. 197 (1933)). The subject of administrative law necessarily had to be studied along with the subject of administrative agencies. It has been said that administrative law "results from the reposing of what are essentially legislative or judicial functions (or both) in an official or board, sometimes belonging to the executive branch of the Government and sometimes independent" (58 A. B. A. Rept. 202 (1933)).

Genealogically speaking, the McCarran-Sumners bill can trace its ancestry back to the time when Senator Norris, of Nebraska, introduced S. 1835 in the first session of the Seventy-third Congress. This was a bill to establish a United States Court of Administrative Justice, which would have been a consolidation of the Court of Claims and the Court of Customs and Patent Appeals, with 5 additional judges, so that it would have been composed of 15 judges. It was proposed to transfer to this court the adjudications by the courts of the District of Columbia in mandamus and injunction proceedings against Federal officials, the review of decisions of the United States Board of Tax Appeals, and the jurisdiction of the United States district courts over claims against the United States and against collectors of internal revenue. This was the first bill introduced in Congress looking to the improvement of administrative justice. No action was taken on this bill.

At the meeting of the executive committee of the American Bar Association, in May 1933 a special committee on administrative law was created (58 A. B. A. Rept. 197 (1933)). That committee submitted its first report at the annual convention of the American Bar Association at Grand Rapids (58 A. B. A. Rept. 407 (1933)). The chairman of the committee stated that:

"The committee is not prepared to make a definite proposal * * *. I incline toward the view that the ideal solution lies in the direction of a Federal Administrative Court, with appropriate branches so as to take over or review the judicial functions of the multitudinous Federal administrative tribunals" (58 A. B. A. Rept. 203 (1933)).

The special committee on administrative law submitted a report to the annual convention of the American Bar Association in Milwaukee in 1934 (59 A. B. A. Rept. 539-564 (1934)). The special committee was continued (59 A. B. A. Rept. 148 (1934)). The following resolution of the committee was adopted:

"That, subject to the approval of the executive committee, the association authorizes the special committee on administrative law to confer with the appropriate Government officials and to appear before the appropriate committees of Congress and to draft and urge the enactment of legislation in furtherance of the special committee's conclusions" (59 A. B. A. Rept. 152 (1934)).

The executive committee of the American Bar Association, at its meeting in January 1935, authorized the special committee on administrative law to draft a detailed bill giving expression to the committee's proposal for an Administrative Court. No bill was presented at the annual convention of the American Bar Association in Los Angeles, in 1935, for reasons explained at that convention (60 A. B. A. Rept. 136-143 (1935)).

S. 3787 and H. R. 12297 were introduced in the second session of the Seventy-fourth Congress by Senator Logan and Representative Celler. These were identical bills providing for the establishment of a Federal Administrative Court.

The special committee on administrative law submitted a report to the executive committee of the American Bar Association at its meeting in May 1936, detailing features of an Administrative Court bill. The executive committee approved a resolution to be submitted at the annual convention of the American Bar Association in Boston that year.

At the annual convention in Boston, in 1936, the special committee on administrative law submitted a report summarizing the provisions of the Logan-Celler bill, and recommended the adoption of a resolution approving in principle the establishment of a Federal Administrative Court, but without approving or disapproving any then pending bill (61 A. B. A. Rept. 720-794 (1936)). The subject of the composition, scope, and jurisdiction of the court was re-referred to the committee for further study and consideration, with directions to report at the next annual convention (61 A. B. A. Rept. 235 (1936)).

The Report on Administrative Management in the Executive Branch of the Government of the United States, submitted January 8, 1937, by the President's Committee on Administrative Management, through Louis Brownlow, Chairman, Charles Merriam and Luther Guelick, and the accompanying study, *The Problem of the Independent Regulatory Commission*, by Robert E. Cushman, contained recommendations very closely parallel to one of the two alternative plans presented to the American Bar Association at its annual convention in Milwaukee in 1934 (59 A. B. A. Rept. 539-546 (1934)). These alternatives, each designed to segregate judicial functions so far as practicable, were (1) a Federal Administrative Court or (2) an appropriate number of independent tribunals having judicial functions only and analogous to the United States Board of Tax Appeals.

In its report submitted to the American Bar Association at its annual convention in Kansas City in 1937, the special committee on administrative law stated that it had concluded to drop any attempt to create an Administrative Court or to consolidate existing legislative courts, and submitted, in lieu thereof, a proposal similar in principle to S. 916 and H. R. 4235, introduced in the first session of the Seventy-sixth Congress by Senator Logan and Congressman Celler, respectively. These bills, however, were not American Bar Association bills, and did not have the endorsement of that association (62 A. B. A. Rept. 789-850 (1937)). The house of delegates approved the recommendations of the committee with respect to intradepartmental boards of review and judicial review "as a declaration of principle," with the contents of the bill to be subject to approval by the board of governors. A revised draft was approved by the board of governors, and introduced by Senator Logan as S. 3676, Seventy-fifth Congress, third session (62 A. B. A. Rept. 334 (1937)).

S. 3676, Seventy-fifth Congress, third session, proposed to establish a United States Court of Appeals and Administration to receive, decide, and expedite appeals from Federal commissions, administrative authorities, and tribunals in which the United States is a party or has an interest. The court would have consisted of a chief justice and not to exceed 40 associate justices. This proposal was not new. It was discussed in the August 1933 American Bar Association Journal, beginning at page 471. It had been commented upon by the special committee on administrative law in 1933 and 1934 (58 A. B. A. Rept. 203, 427 (1933); 59 A. B. A. Rept. 550 (1934)). Hearings on S. 3676 were held by a subcommittee of the Senate Committee on the Judiciary on April 1, and 5, 1938, but no further action thereon was taken.

At the annual meeting of the American Bar Association in Cleveland, in 1938, the only action taken on the report submitted by the committee on administrative law was that of the house of delegates directing that a bill be submitted to the house of delegates and the board of governors for consideration (63 A. B. A. Rept. 331-368 (1938)).

On January 3, 1939, Congressman Celler introduced H. R. 234, Seventy-sixth Congress, first session, to establish a United States Administrative Court to expedite the hearing and determination of controversies with the United States, and for other purposes. This bill was similar to the Logan bill, S. 3676, Seventy-fifth Congress, third session. It was superseded by S. 916 and H. R. 4235, Seventy-sixth Congress, first session.

Up to this time all proposals had been directed toward the establishment of a Federal Administrative Court, or the equivalent thereof. The first of the so-called administrative law bills was S. 915, introduced in the first session of the Seventy-sixth Congress by Senator Logan, to provide for the more expeditious settlement of disputes with the United States. An identical bill, H. R. 4236, was introduced by Congressman Celler.

The Logan-Celler bill (S. 915 and H. R. 4236) represented the first introduction in Congress of the American Bar Association legislative proposals on this subject, these bills having received formal approval of the American Bar Association by action of its board of governors and its house of delegates at their meetings in Chicago in January 1939. (See American Bar Association Journal, February 1939, pages 93-102.) The bill as submitted by the association's special committee on

administrative law was amended before being approved. The committee was directed by the house of delegates to take such action as might be necessary to obtain enactment of the endorsed bill (64 A. B. A. Rept. 281 (1939)).

S. 915 was reported by the Senate Committee on the Judiciary, with amendments, on May 17, 1939 (S. Rept. 442, 76th Cong., 1st sess.). The bill was passed by the Senate on July 1, 1939, but restored to the calendar by adoption of a motion to reconsider. H. R. 6324, practically identical with S. 915, as amended and passed by the Senate, was introduced by Congressman Walter.

An annotated copy of S. 915 as passed by the Senate was published on February 8, 1940, as Senate Document 145, Seventy-sixth Congress, third session. An analysis of this proposed legislation was printed in the Congressional Record of April 18, 1940, at pages 7225-7228. An article discussing it was printed in the Congressional Record of May 1, 1940, at page 8242-8248.

S. 915, H. R. 4236, and H. R. 6324 departed from the administrative court bills by providing for the "implementing" of administrative rules.

The administrative court bills, however, continued to be presented to the Congress. S. 916 was introduced by Senator Logan, and H. R. 4235 was introduced by Congressman Celler. These bills, proposing an administrative court of a chief justice and 10 associate justices were similar to earlier bills on that subject.

On February 24, 1939, the Attorney General announced the appointment of a committee to be known as the Attorney General's Committee on Administrative Procedure, to study the practices and procedure of the various administrative agencies of the Government, with a view to determining to what extent improvements were desirable. The Attorney General's Committee requested the committees of the respective Houses of Congress to defer action on any of the administrative law or procedure measures then pending until after the Committee had completed its study and made its report and recommendations.

H. R. 6324, which was practically identical with S. 915 as passed by the Senate, was reported by the House Committee on the Judiciary, with slight amendments, on July 13, 1939 (H. Rept. 1149, 76th Cong., 1st sess.). It was passed by the House on April 21, 1940, by a vote of 287 to 97, and sent to the Senate. The bill was reported by the Senate Committee on the Judiciary on May 9, 1940, and passed by the Senate, with amendments, on November 26, 1940. The Senate amendments were agreed to by the House on December 2, 1940. This bill, which had become known as the Logan-Walter bill, was vetoed by the President on December 17, 1940. The veto was sustained by the House by a vote of 153 to 127, making Senate action unnecessary.

In view of the fact that the Logan-Walter bill, S. 915-H. R. 6324, was pending in the Congress, the report of the special committee on administrative law was received at the annual convention of the American Bar Association, at Philadelphia, in 1940, and no action taken thereon (65 A. B. A. Rept. 215-220 (1940)).

The final report of the Attorney General's Committee on Administrative Procedure was dated January 22, 1941, and transmitted to the Senate by the Attorney General on January 24, 1941 (S. Doc. 8, 77th Cong., 1st sess.).

The report of the Attorney General's Committee on Administrative Procedure was followed by the submission to the Congress of three sets of bills. Bills to carry out the recommendations of the minority of that Committee were introduced as S. 674 and H. R. 4238, in the first session of the Seventy-seventh Congress. Bills to carry out the recommendations of the majority of the Committee were introduced as S. 675 and H. R. 4782.

At practically the same time there were introduced S. 918 and H. R. 3464. This bill soon obtained the label of "A. B. A. bill," although it did not represent the views of the American Bar Association. At the annual convention of the American Bar Association in Indianapolis, in 1941, the special committee on administrative law submitted, for adoption by the house of delegates, a resolution approving a "statement of principles" set forth in its report (66 A. B. A. Rept. 439-454 (1941)). This "statement of principles" was immediately followed by a paragraph stating that S. 918 and its companion bill H. R. 3464 "substantially comply with the foregoing statement of principles. The fact is mentioned here as a matter of record only, as we are not recommending the approval of the exact terms of any of these bills." A somewhat similar statement is found in an article in the American Bar Association Journal of March 1941, at pages 151-152.

The "statement of principles" was amended by the board of governors, the amendment being concurred in by the committee. The amendment expressed the opinion that S. 674 "is the bill which up to this time best embodies the above statement of principles." The statement of principles, as amended, was adopted by the house of delegates (66 A. B. A. Rept. 404 (1941)).

Then came Pearl Harbor, and the war. For the next 2 years the special committee on administrative law devoted its energies to the development of the Conference on Administrative Law and other matters covered in its annual report (67 A. B. A. Rept. 226 (1942)).

The situation was reviewed by the committee in its report for 1943. In a supplemental report submitted at the annual meeting in Chicago, in 1943, the committee noted indications of renewed public and congressional interest in the subject of administrative procedure, and submitted a tentative draft of material for Federal legislation on the subject, and urged the perfecting of a comprehensive proposal in order to provide detailed proposals upon which attention could be focused, serve as mutual provisions for reference, and furnish a draft for consideration in the adoption of a general administrative procedure statute (68 A. B. A. Rept. 249-253, 254-257 (1943)). The house of delegates approved the recommendations of the committee (68 A. B. A. Rept. 148 (1943)).

At a meeting of the house of delegates of the American Bar Association, on February 28-29, 1944, a comprehensive bill to improve the administration of justice by prescribing fair standards of procedure was approved without a dissenting vote. American Bar Association Journal, April 1944, pages 181-189.

On March 2, 1944, Congressman Gwynne introduced H. R. 4314, Seventy-eight Congress, second session, which would give effect to many of the American Bar Association recommendations in the form in which they were embodied in earlier drafts. The Gwynne bill was not, however, the American Bar Association bill in the perfected form which was approved by the house of delegates.

The American Bar Association approved bill was introduced in the second session of the Seventy-eighth Congress by Senator McCarran, as S. 2030 and by Congressman Summers, of Texas, as H. R. 5081. No action was taken on either of these bills.

Also introduced in the second session of the Seventy-eighth Congress was H. R. 5237, by Congressman Smith, of Virginia, to carry out the recommendations of his Select Committee to Investigate Executive Agencies, as contained in the sixth intermediate report of that committee (H. Rept. 1797, 78th Cong., 2d sess.).

S. 7 and H. R. 1203, introduced in the first session of the Seventy-ninth Congress, are similar to S. 2030 and H. R. 5081, and represent the latest recommendations of the American Bar Association for legislation to improve the administration of justice.

(The following bills relating to administrative procedure have also been introduced in the Seventy-ninth Congress: H. R. 184 (Celler), similar to S. 675, H. R. 4782, Seventy-seventh Congress, to carry out recommendations of majority of Attorney General's committee. H. R. 339 (Smith) similar to H. R. 5327, Seventy-eighth Congress. H. R. 1206 (Walter), similar to S. 674, H. R. 4238, Seventy-seventh Congress, to carry out recommendations of minority of Attorney General's committee.)

Mr. MILLER. I come now to a subject that I think I shall have to discuss at some length, and I promise you, first of all, I am going to be as brief as I possibly can in all of my presentation and it may be of some interest to say I hope to complete it this forenoon.

The CHAIRMAN. That is very gratifying.

The committee has, of course, full knowledge of the report of the Attorney General's Committee on Administrative Procedure. I would like, with the permission of the Chair, to take a little time to discuss that report.

Mr. WALTER. Which one of the reports are you referring to?

Mr. MILLER. The Attorney General's committee report on administrative procedure.

Mr. WALTER. There were four filed.

Mr. MILLER. I am thinking of it as a whole; and between the minority and majority there were differences, but I am trying to deal here with all of them.

The CHAIRMAN. Mr. Miller, I am not quite sure what you have in mind, but I am sure what the committee needs. The historical aspect of this matter is of interest to the committee and probably of general interest, but what this committee wants to know now is what sort of

legislation in the judgment of the gentleman who is addressing the committee, and his associates, ought to be enacted.

Mr. WALTER. If I may interrupt: Certainly, with regard to the review of the courts themselves of decisions of administrative agencies.

The CHAIRMAN. I do not want to disturb what you have in mind as to an orderly procedure, but what we are anxious to get is usable information.

Mr. MILLER. Mr. Chairman, I think if I explained to you what I propose to do, you will be able to judge as to whether you want it discussed, bearing in mind that I am simply trying to be just as helpful to the committee as I can.

The CHAIRMAN. I understand.

Mr. MILLER. In the consideration of this subject, quite naturally since 1941, when the Attorney General's committee submitted its report, the consideration has been based upon what that committee did.

The CHAIRMAN. We are not interested in going into that now; we are interested in what you want us to do now.

Mr. MILLER. What I have proposed to discuss, what I had planned to do, was to try to state what this committee pointed out it thought should be done.

The CHAIRMAN. We want you to point out what you think ought to be done. A great deal of this has shifted; changes have occurred along the road, and what we want you to do now is to discuss it from the standpoint of what you think we should do.

Mr. MILLER. That phase of it will be discussed by Mr. McFarland, and I will not attempt to repeat; and I do not want to put anything in the record except what is agreeable to the committee.

Mr. Chairman, what I had planned to do was to give you the picture as presented by the report of the Attorney General's committee.

The CHAIRMAN. I do not believe we are particularly interested in that at this time. What we want to know now is what the gentleman who is here before us believes should be done.

Mr. WALTER. Some of us are aware of the reasons for the creation of the Attorney General's committee.

Mr. MILLER. I know that is true.

The CHAIRMAN. I know that the committee is tremendously interested in what should be done now.

Mr. MILLER. I appreciate that, Mr. Chairman, and that matter will be the subject which Mr. McFarland will present to you.

The CHAIRMAN. That is what we want to get at.

Mr. MILLER. I think that being true, Mr. Chairman, I would simply state that we are trying to make our presentation as flexible as possible as we did not know what the committee would want.

The CHAIRMAN. We need help and we need help badly.

Mr. MILLER. In view of what the chairman has said, and in view of the fact that Mr. McFarland is to discuss the details of the bill I will give way to him now.

The CHAIRMAN. You have done a very helpful thing; you have given us for the record the history of the development of this bill and we appreciate it, but we do want to get at the facts.

Mr. MILLER. I appreciate that very much, Mr. Chairman, and as I say, we were trying to make our presentation as flexible as possible, and we do not have any written statements because we did not want

to burden the committee with anything that it was not particularly interested in.

The CHAIRMAN. We are glad to have the history of the matter presented to us but we do want to get down to the consideration of what the gentleman appearing before thinks should be done now.

Mr. MICHENER. Mr. Chairman, I do not want to seem discourteous, but I must be on the floor at 11.

The CHAIRMAN. We understand that, Mr. Michener.

Mr. MILLER. Mr. Chairman, I will give way and ask Mr. McFarland to discuss the details of the measure.

I would like to have inserted in the record at this point the report of the Attorney General's Committee on Administrative Procedure.

The CHAIRMAN. It may be inserted in the record.

(The document referred to is as follows:)

REPORT OF ATTORNEY GENERAL'S COMMITTEE ON ADMINISTRATIVE PROCEDURE

The report of the Attorney General's Committee on Administrative Procedure was published as Senate Document No. 8, Seventy-seventh Congress, first session (1941), and is captioned "Administrative Procedure in Government Agencies."

The committee submitted its report to the Attorney General on January 22, 1941, and the Attorney General transmitted it to Congress on January 24, 1941.

I shall not attempt a detailed summarization of that report. However, in the interest of proper orientation, I should like, at this time, to give the committee a panoramic view of the report.

The committee was appointed in February and March of 1939. It consisted of six law professors, two judges of our local courts, one from the United States Court of Appeals and one from the United States District Court, the Solicitor General of the United States, and three lawyers in private practice.

Necessarily, in any group so constituted there are to be found conflicting opinions and philosophies. The surprising thing in this report is that as to most things there was not a great deal of difference of opinion expressed. The committee did, however, divide into two groups, one as the majority and the other as the minority. The majority consisted of five law professors, the United States district court judge, the Solicitor General of the United States, and one lawyer in private practice.

The minority was composed of one law professor, the United States Court of Appeals judge, and two lawyers in private practice. I make this point in order to dispel any idea that the difference in views, or the division, was between the law professors and the judges and practicing lawyers as such.

It is well, I think, to keep in mind the specific duties that were assigned to the committee. Its first duty was to make a thorough and comprehensive study of existing practices and procedures. Its second duty was to suggest improvements, if any were found to be advisable.

The committee studied 33 agencies, and submitted 27 monographs dealing with the procedures of those agencies.

Any discussion of the report, dealing with conclusions and recommendations, must necessarily deal with the general recommendations which are applicable to all the administrative agencies.

One of the first things we learn from this report is that administrative agencies are not as new as we sometimes look upon them as being.

The report points out that three administrative agencies were created by the Congress during its first session. These agencies were the predecessors of the present Bureau of Customs and the antecedent of the present Veterans' Administration.

The report discusses the reasons for the creation of administrative agencies. These reasons, as we all know, are varying.

The committee reached the conclusion that the administrative process is not an encroachment upon the rule of law, but is an extension of it.

I should like to discuss now, as briefly as I know how, some of the recommendations of the committee.

The committee recommends that members of administrative agencies should delegate functions to subordinates, so as to have the time to decide, fairly and wisely, important matters affecting public interest and private rights.

The committee said that it has been impressed by the frequent reluctance of high officers charged with serious policy-making functions, to relinquish control over the most picayune phases of personnel and business management.

The committee recommends that agencies should publish their policies and internal structure and organization and their procedures.

The committee recommends that, except in unusual cases, decisions should be explained by writing reasoned opinions.

The committee refers to the sentiment among lawyers that only members of the bar should be permitted to practice before administrative agencies. I should like to quote briefly from what it says on this subject:

"The committee doubts that a sweeping interdiction of nonlawyer practitioners would be wise, nor does it believe that corporations or other organizations should in all cases be forbidden to appear through and be represented by their officers."

The majority of the committee would impose upon the Director of the Office of Federal Administrative Procedure, an office proposed to be created by both the majority and minority, the duty to investigate permission to practice before the several agencies in order to determine whether it can be centralized and controlled, with a view to eliminating needless delay and duplication in authorizing members of the bar to appear before agencies; regularizing the circumstances in which other than members of the bar may properly so appeal. This majority proposal recognized the right of nonlawyers to appear before administrative agencies.

The minority proposed two things: First, that the requirements for admission of attorneys or agents to practice, and the maintenance of formal registers of practitioners be omitted wherever practical. Secondly, that the OFAP may, subject to certain conditions, establish and maintain a central method for the registration for admission of attorneys and others to practice before the several agencies. The minority thus provided for the nonlawyer practitioners.

The committee proposed that, where admissions to practice are deemed necessary by any agency, attorneys admitted to practice in the highest courts of any State or Territory, or in any Federal court, should, upon written representation to that effect, be admitted to practice before such agency excepting, of course, the Patent Office.

The committee does not believe public hearings are necessary as a condition precedent to rule making, i. e., making of procedural rules. It does believe, however, that when possible, an opportunity should be given for persons to express their views, and that existing use of informal conferences and public hearings should be continued.

The committee says that regulations, as a general rule, should not be effective for at least 45 days after publication in the Federal Register. The committee takes the view that persons should have the right to petition for new rules or amendments of existing rules, and that the administrative agencies should report to Congress annually with respect to their rule-making activities. The committee opposed judicial review of administrative rules and regulations in general. The committee recommends the use of declaratory rulings as to the application of a rule where a person has an interest actually affected by the rule.

The committee rejected the view that the rule-making process is essentially the same as that of legislation, and that the legislative technique should be followed.

The committee reached the conclusion that there are four stages of rule making:

1. The investigation of the problems to be dealt with;
2. A formulation of tentative ideas of regulations;
3. The testing of these ideas;
4. The formulation of the regulations.

The committee was very specific in its recommendation that those who are affected by rules should have an opportunity to express their views with respect to those rules.

A considerable portion of the report is devoted to a discussion of the subject of informal procedures. The committee states that over 90 percent of matters coming before administrative agencies are informal procedures of one kind or another. The committee recommends that these procedures be improved in many instances.

The committee condemned the practice, in effect with some administrative agencies, whereby a person has to admit past guilt before he is allowed to consent to not violate a law in the future.

The committee recommends that in many instances where the statutes now require hearings, it would be enough to require the agency to give notice of the

proceeding, and if no protest is filed to then dispose of it without formal hearing.

Now, with respect to formal proceedings: The committee expresses the view that formal cases have an importance out of proportion to their numbers. What the committee says reminds me very much of what was said about Caesar's wife. The report states that not only should the decisions of the administrative agencies be impartial, but that the public should be convinced that they are impartial. Expertness and expedition are held by the committee to be essential.

The committee discusses and criticizes the length of hearings and the lengthy records in some cases. It is strong in its recommendation for prehearing conferences and stipulations of facts. The committee points out, however, with respect to prehearing conferences, that adequate authority must be given the representative of the agency who presides at such conferences.

The committee also recommends that all hearings be public, except, of course, where private and confidential matters are involved, such as in some of the proceedings before the Veterans' Administration.

The committee recommends the use by all administrative agencies of the so-called shortened procedure which has been so successfully used by the Interstate Commerce Commission.

The committee points out that the relaxation of common law rules of evidence in jury trials is a necessity in administrative hearings. The committee condemns the practice of some hearing officers in admitting evidence "for what it is worth," and says that such practices show indecision on the part of the presiding officer and result in unduly swelling of records.

The committee recommends a more extensive utilization of what we have come to call "official notice," but, at the same time, it says that this must be accompanied by what it refers to as "safeguarding mechanics." The committee says the parties should be apprised of what the agency proposes to take "official notice," and sets up procedure to carry that into effect.

The committee recognizes that the heads of agencies cannot personally hear testimony and make the initial decisions. It recognizes that examiners, or hearing officers, are a necessity. As a matter of fact, they are referred to as "the heart of formal administrative adjudication."

The committee states that good men are attracted to these positions where their importance is recognized and adequate salaries paid; where authority and independence of judgment are accorded; and where weight is given to their decisions. Where this is true, the committee finds that proceedings are well conducted and that the public has confidence in them.

The committee finds, however, that this situation does not exist throughout all of the administrative agencies, and proposes to correct that evil by setting up what are known as hearing commissioners instead of examiners. The committee suggests that these hearing commissioners should be men of ability, stature, and prestige. The committee says these men should be appointed for definite terms. The majority says 7 years—the minority says 12 years. The committee also says they should be paid substantial salaries.

According to the recommendations of the committee, these hearing commissioners would constitute a separate unit in each agency organization. They would have the same relationship to the agency as judges of lower courts have to appellate judges who review their decisions. Their functions would be limited to presiding at hearings or prehearing negotiations and to making initial decisions. They would be nominated by the agency, be approved and appointed by the OFAP. They would be removable only after hearing by a trial board independent of the agency to which the hearing commissioner is assigned.

Findings and decision of a hearing commissioner would become the final decision of the agency unless an appeal is taken by a party or review is ordered by the agency on its own motion. In reviewing the work of the hearing commissioners, agency heads would be limited to the specific grounds set out by the party seeking the review, or to the terms of the order of the agency directing the review. Conclusions and interpretations of law would be open to full review. Findings of fact, the committee says, should not be disturbed unless contrary to the weight of the evidence.

The committee suggests that oral arguments should be made before the boards or commissions, sitting as divisions when necessary. In the case of single-headed departments or agencies, the committee suggests that all pretense of personal consideration or decision should be abandoned, and boards of review or deciding officers created, with appeals to the agency head, in his discretion, and then personal decision by him.

The committee is in full agreement with the position that the same person should not be prosecutor and judge.

The committee recommends the creation of the Office of Federal Administrative Procedure, consisting of a justice of the United States Court of Appeals for the District of Columbia, to be designated by the chief justice of that court, the Director of the Administrative Office of the United States Courts, and the Director of Administrative Procedure, who would be appointed by the President, by and with the advice and consent of the Senate. Each agency would designate one of its responsible officers to serve as an adviser to the Director.

Functions of the OFAP would be:

1. To examine critically the procedures and practices of agencies which may bear strengthening or standardizing.
2. To receive suggestions and criticisms from all sources.
3. To collect and collate information concerning administrative practice and procedure.
4. To appoint hearing commissioners.

The committee suggests seven subjects which the OFAP might very well study, namely:

1. Admission to and control of practice.
2. The issuance of subpoenas.
3. The use of depositions.
4. Forms of briefs and pleadings.
5. Answers.
6. The availability of records, including the costs of transcripts of proceedings.
7. Reports required to be made of citizens—going into their necessity and their duplication.

With respect to judicial review, the majority of the committee found existing provisions for judicial review to be wise and recommended that they should be maintained.

The majority believed that judicial review, generally speaking, should be limited to whether the agency acted within the scope of its authority, whether the procedure was fair, and whether the decision was based on substantial evidence. The majority proposed, however, that if a wrong method of review is sought, or if action is brought in the wrong court, then the court (if it has jurisdiction) should grant review as if a proper method had been chosen or (if it does not have jurisdiction) transfer the case to the proper court.

With respect to judicial review, the minority of the committee had a different view. The minority said that the haphazard, uncertain, and variable results of the present system (or lack of it) constitutes a "major deficiency," and that the present scope of judicial review is subject to question by reasons of the interpretation of what constitutes substantial evidence.

The minority expressed the opinion that courts should set aside decisions clearly contrary to the manifest weight of the evidence.

In the view of the minority, present statutory formulas of judicial review fail to take account of differences between various types of fact determinations. The view is expressed that present standards of judicial review are unsatisfactory because they are determined by the usual case-to-case procedure of the courts. In this connection, the minority uses the statement: "Piecework process produces patchwork results."

The minority agrees that the recommendations of the majority, if carried out, would go very far to effecting major improvements. The minority, however, proposed a "code of fair standards of administrative procedure," to provide a "procedural pattern" to serve as a guide to administrators.

The minority believes that the majority does not go far enough with respect to the operation of prosecuting and judicial functions, the scope and practice of judicial review, and the need for a legislative statement of standards of administrative procedure. The minority discusses the "formlessness" of present procedure, and the need for legislative guidance.

The majority believed it to be the better part of wisdom to be content at this time with the several major steps the committee proposes, with future action depending upon experience with the operation of their proposals, and further studies by Congress, the agencies, and the suggested OFAP.

I appreciate, of course, that the foregoing is but a sketchy summary of the report, but, in the light of discussions that are to follow, I think it is perhaps all that needs to be placed in the record on this subject at this particular point.

STATEMENT OF CARL McFARLAND, WASHINGTON, D. C.

Mr. McFARLAND. Mr. Chairman and members of the committee, my name is Carl McFarland. I am a member of the D. C. bar, and I am here as chairman of the American Bar Association's special committee on administrative law.

I shall attempt to assist the committee by discussing the structure and the provisions of the various bills that are before the committee. After all, most of these bills fall into a fairly standard pattern.

The CHAIRMAN. You are going to discuss the general subject?

Mr. McFARLAND. Yes.

The CHAIRMAN. Rather than the individual bills?

Mr. McFARLAND. I am not particularly interested in "A, B, C" bills.

The CHAIRMAN. That is right.

Mr. McFARLAND. All of these bills are drawn, and any intelligent measure must be drawn, on a functional basis. They do not relate to agencies by name. They relate to some of the specific kinds of things that administrative agencies do, just as legislation which you gentlemen have placed on the books relating to private individuals ordinarily does not relate to individuals by name but relates to what they do.

Furthermore, in this particular subject, no one has attempted to draw a set of rules of practice for any administrative agency. The whole idea has been to draw the skeleton, upon which administrative agencies may adopt their own rules of procedure.

All of these measures fall into a simple outline of three main points. The three subjects which they contain are: No. 1, public information; No. 2, administrative operation; and No. 3, judicial review. Every measure contains a series of formal provisions, such as title, definitions, effective date, and that sort of thing. Also, every measure contains some further provisions respecting some of the various incidents of administrative operation, the matter of appointment and status of examiners, the nature of the hearing, and the method of rendering decisions.

Administrative operation is the second of the three subjects, and necessarily divides itself into two parts, one relating to the making of general regulations, the second part relating to the determination of particular cases. Administrative agencies, despite all that has been said and all that has been tried, do nothing different than courts and legislatures do. They have invented new words, but nevertheless they legislate. They have invented new words, but nevertheless they adjudicate. They issue injunctions just as they issue statutes, and for those two different types of activities it is necessary that sharp distinctions be drawn.

It falls to me to discuss some of the details, and in discussing the operation of any measure—

Mr. WALTER (interposing). May I interrupt for just a question?

Mr. McFARLAND. Yes.

Mr. WALTER. As a member of the Attorney General's committee, you participated in the preparation of a volume of research. I wonder where those volumes are. I think our committee ought to have a complete set.

Mr. McFARLAND. You mean the monographs?

Mr. WALTER. Yes.

Mr. McFARLAND. I have a complete set and will be glad to let the committee have them. I know of no higher purpose that could be served by them. There are several volumes of hearings also, and there are reports and Senate hearings, perhaps, that would be of interest.

Mr. WALTER. I think that we ought to have the monographs that were prepared by the Attorney General's committee.

Mr. McFARLAND. There are about 27 of them, I believe.

Mr. WALTER. Where could we get them?

Mr. McFARLAND. They are public documents, Mr. Aitchison points out, and have been printed, although a good many of them are out of print. I will be glad to see that the committee has a full set.

Mr. WALTER. Thank you.

Mr. McFARLAND. As I go, I think it would be helpful to compare, in a word or two, the previous proposals—chiefly the proposals that were made by the so-called Attorney General's committee.

All of these bills fall pretty much in the same pattern: The definition of an agency is probably the only one that would cause some difficulty to anyone that looks at it cold. The three initial definitions are the definition of "agency," the definition of "rule making," and the definition of "adjudication." When you define an agency you still are not indicating very much about what any bill can do. The definition of an agency is merely an exclusionary device in all of these bills; it is a preliminary matter.

The first real subject of bills is the subject of public information. Most of the bills provide, and have in the last 5 or 6 years provided, that the agency should make certain kinds of rules. The Attorney General's Committee on Administrative Procedure was in favor and stated that one of the most serious aspects of the whole system was a lack of common, ordinary, simple information.

It is a curious thing about information here in Washington. Many people seem to have little interest in information. But west of the Appalachian Mountains and further west you will find that people are thinking about the problem of how to find out about administrative operations. Americans generally do not like to ask somebody; they want some official place where they can find out about the organization of the board or the committee or the commission. It is of little comfort to the ordinary person to be told that while there is no official statement, they can ask and will be told what they wish to know. The difference lies in a guarded oral statement and authoritative written information.

There seems to be no dissent from the provision respecting information. There was at one time considerable comment about the possibility that legislation, if attempted, would force the agencies to make substantive rules. In other words, the argument was that you cannot require an agency to make all necessary rules to cover all conceivable situations at one time. That is not proposed.

Mr. WALTER. Was not that a spurious argument, in view of the efforts of the people who are opposed to the philosophy of this type of legislation?

Mr. McFARLAND. I personally thought it was.

Mr. GWYNNE. People have asked me from time to time where to get information as to the rules and regulations respecting the Wages and Hours Administration, which from time to time does make rules and

regulations. What, if anything, has been done about getting that information to the public who is interested in it?

Mr. McFARLAND. Of getting it to the public?

Mr. GWYNNE. Yes. What is being done now to provide interested parties in cases about the attitude taken by the Wages and Hours Administration in certain distinct questions?

Mr. McFARLAND. Of course, they have a distinction, in the first place, between general rules and special interpretations.

Mr. GWYNNE. Yes.

Mr. McFARLAND. The general regulations appear in the Federal Register.

Mr. GWYNNE. I am referring particularly to the interpretations.

Mr. McFARLAND. The interpretations of all Government agencies, without attempting to relate them to the wages-and-hours provision, are difficult to make sure of. They are not subject to the Federal Register Act in the sense that they must be published. So, a good many agencies have two kinds of interpretations; those which they let people see and those which they reserve. There are undoubtedly some kinds that you possibly should not let people see—such as those that relate to housekeeping.

Mr. GWYNNE. To what?

Mr. McFARLAND. To housekeeping, to personnel, and that sort of thing. There seems to be complete agreement, so far as I can discover, that if an agency intends to relate the regulation that is in effect to the public there should be some central place for the public to find it.

The CHAIRMAN. Mr. McFarland, what would be the objection to publishing all of them in the Federal Register?

Mr. McFARLAND. I believe the objection you will find to it would be that the volume would be too great.

The CHAIRMAN. I thought that would be the answer.

Mr. McFARLAND. I do not believe there is a great deal of objection in the field of public information as long as it can be found, because someone can compile that information and make it available.

I am sure that no agency has deliberately attempted to withhold information. I do think in the business of Government there are times when administrators rather neglect to think about the problem of the fellow who is trying to find out.

The CHAIRMAN. Mr. McFarland, I believe that the committee will agree that there ought to be publicity. Now will you go to the point about how you propose to get it to the public?

Mr. McFARLAND. The only suggestion that has been made, and the only suggestion that seems feasible, is one which would require, under positive mandate of law, that the organization send into the central point a statement of their procedural rules and methods, followed by publication in the Register. The Attorney General's committee feels that there is a very serious defect in the Federal Register Act because it made no requirement that organizational and procedural rules should be made.

It is admitted that you cannot require agencies to make rules for all circumstances, but you can require them to formulate and publish their rules and methods of procedure.

The CHAIRMAN. Mr. McFarland, to get the matter clear in my mind, you say the Federal Register does not require the making of rules; and of course if they do not make rules, they cannot publish them.

Do you mean to say that some of these departments and agencies are acting without rules and regulations?

Mr. WALTER. They make rules from day to day.

Mr. McFARLAND. I am not speaking of those.

Mr. WALTER. No; no.

Mr. McFARLAND. I am speaking of the procedural rules.

The CHAIRMAN. You are moving somewhat now from the matter of publicity into the discussion of what should be publicized, is that right?

Mr. McFARLAND. Yes; I am making my answer to the point that only certain things should be required to be made and published.

It would be impossible, impractical, for us to say to an agency, to make all your rules, substantive and procedural for every case and every circumstance today before you start operating. But it is fair and it is feasible to require administrative agencies to make their rules of procedure, give people guidance as to how they may proceed, before the agency starts operating.

The second thing that can be done is to state, in the matter of orders and decisions, that agencies shall either publish them or have a central repository where people can get them. The repository, I think, is sufficient, because various commercial publishing houses take these things and get them around.

Mr. GWYNNE. In that connection would it not be possible to get out a report something like the Attorney General's statement? He gets out a volume of opinion which is very useful.

Mr. McFARLAND. Most of the agencies do that; the Interstate Commerce Commission reports, for example.

Mr. GWYNNE. What about the Wages and Hours Administration? There are a number of things that are passed on by them.

Mr. McFARLAND. It is the practice to get out such statements. The Wages and Hours Administration publishes various interpretations—you can get them in the looseleaf volumes of commercial publishers.

Mr. GWYNNE. I mean something that would be helpful to the businessman who wants to comply with the interpretations that are laid down with respect to the Wages and Hours Act. He ought to be able to find what those rules and regulations are.

Mr. McFARLAND. Of course, the Wages and Hours Division and many other agencies get out pamphlets which people can secure at a very modest cost, or none.

Now, we come to the main part of any statute, and that is the matter of administrative operation. As I said a while ago, none of these statutes propose to say precisely how agencies shall operate but they do attempt and necessarily must attempt to lay down some skeleton or framework.

I would like to epitomize this operation matter very briefly. There are two kinds of operations as all studies have indicated and any practitioner knows: Number 1, the issuance of a general regulation, which is similar to a statute; Number 2, the matter of an adjudication, similar to the judgment of a court.

Now with respect to number 1, the issuance of general regulations: There seems to be fairly complete agreement that you can provide and you should provide only for one thing. That is that, unless Congress in some other statute has required the regulation to be made upon hearing, the only thing that should be required is for the agency to give notice of making of any substantive rule and allow people to submit at least in writing their suggestions and to consider them before the issuance of whatever regulations are made.

Mr. WALTER. Procedural regulations?

Mr. McFARLAND. Or substantive, prior to the issuance of such regulations.

Mr. WALTER. May I interrupt you there?

Mr. McFARLAND. Yes.

Mr. WALTER. What you are suggesting is the method that has been followed by the Maritime Commission for a number of years and it has worked out very satisfactorily.

Mr. McFARLAND. Many agencies operate in that way. For instance, the Interstate Commerce Commission will do a great deal by consultation. The industry being organized, they can call in committees and go into any matter.

Incidentally, no proceeding ought to be required with respect to procedural regulations, interpretative regulations, or statements of policy. That is, the agency should be as free as it can be in that respect for the simple reason that those types of regulations are the kind that agencies should be encouraged to make, the procedural rules, interpretative rules, statements of policy, and things like that—

The CHAIRMAN. Mr. McFarland, let me interrupt you. The interpretative regulations of substantive regulations become very definitely substantive.

Mr. McFARLAND. The interpretative?

The CHAIRMAN. The interpretative regulations of substantive regulations, because the interpretation is what affects these people.

Mr. McFARLAND. That is right.

The CHAIRMAN. What do you think can be done with respect to that type of regulation; is it to be publicized?

Mr. McFARLAND. Yes; it should be publicized.

The CHAIRMAN. I think I misunderstood you.

Mr. McFARLAND. In the issuance of regulations, the procedure required should be limited to substantive regulations and should require no more than that the agency give notice to the parties in some way, with an opportunity for them to present their views.

Now, there is another point that seems to be fairly well agreed upon, on that same subject, and that is that the rules of an agency, before finally going into effect, should be deferred for, say 30 days, for two principal reasons: One, so that if they have overlooked something someone may call it to their attention so that an amendment can be made before the effective date. Secondly, so that the parties have a chance to adjust themselves.

Mr. WALTER. Do you provide any way of attacking the regulations thus made?

Mr. McFARLAND. By judicial review?

Mr. WALTER. Yes.

Mr. McFARLAND. Yes.

Mr. WALTER. That is very important because the regulations, of course, become law, and it might very well be the result of arbitrary or capricious action, and unless you can attack the interpretation there would be little advantage in expressing your views on them.

Mr. McFARLAND. Yes.

Mr. GWYNNE. You would provide, for instance, that the attack might be made on a regulation, but do you provide that the person making the attack may do so even though he is not a party to the suit; for instance, where there is some regulation made that affects agriculture where the individual party is going to be affected, can there be a provision whereby someone who had an interest perhaps in agriculture could make some kind of an attack on that kind of regulation?

Mr. McFARLAND. Of course, you are getting to my third subject; and I might as well try to answer now. What you speak of is a case where some person who is not drawn into the suit but who has a general interest in the subject seeks to attack the regulation. I suppose the taxpayers' suit would be in point.

Mr. WALTER. I think Mr. Gwynne's question is answered by the case of *Lukins v. Perkins* in the Supreme Court, where the court held that the Lukins company had no interest, despite the fact that it was in position to submit a bid on certain Government work.

Mr. GWYNNE. What I have in mind is whether there is any provision made for the method of appeal to the court by a person even though he would not be in the case in controversy in the court. Is that situation in this bill?

Mr. McFARLAND. I do not believe it is.

The CHAIRMAN. Mr. McFarland, you observe the interest the members have in that particular feature, and if the committee has not given consideration to it, it seems to me that some consideration should be given to the question of determining whether or not the person who feels or knows that a situation is involved in which an operation in which he is engaged may possibly be subject to penalty because of some regulation that has been adopted, should have an opportunity to attack that regulation in court.

Mr. WALTER. I do not think that is what Mr. Gwynne had in mind.

Mr. GWYNNE. Take this specific case, where under the Wages and Hours Act they had certain areas of production, and the Wages and Hours Administration issued various interpretations and regulations concerning that.

Now, that affects canners and farmers generally that are represented pretty much by an organization; they have a counsel and the general consensus of opinion, we will say, is opposed to the interpretation put upon the act by the Wages and Hours Administration. Now, could somebody representing that group or company go into court or must they wait until some individual farmer is affected and takes the case into court?

Mr. McFARLAND. I think that is very possible; that is done through a representative suit.

Mr. GWYNNE. Would they have to have an actual suit?

Mr. McFARLAND. That would come under the head of declaratory judgment?

Mr. WALTER. That is dealt with in section 211 (a) in H. R. 1206, Mr. Gwynne. That is what we were trying to do when we wrote that section.

Mr. CRAVENS. If you let anyone make an attack on a regulation, would that not permit someone to make an attack on some regulation that may never have any effect on him at all?

Mr. McFARLAND. Well, that is true. I think it is a question of where you are going to draw the line. If you have a regulation which is going to affect you and if you are able to do something and you want to do something and you are in the position where you are threatened, the standard equity law says, with the legal consequences if you proceed, you are, under present law, entirely capable of going into court and having an adjudication.

The CHAIRMAN. May I suggest, Mr. McFarland, that I think possibly that particular feature has been pretty well covered, and that you pass to the next matter?

Mr. McFARLAND. Now to get back to the matter of general regulations, I would like to repeat again that the present agreement seems to be that parties ought to be allowed to submit their views in those cases where more formal procedures are not required by present statute. Secondly, that there should be a deferred effective date provided, insofar as may be practical, in a given case.

Then there is a third proposal which I think you will find in almost all bills, and in which the Attorney General's committee was particularly interested, and that is that the right of petition should be accorded to private parties in administrative procedure, the same as the Constitution accords to citizens in connection with congressional processes. That is the right to ask to have the regulation modified; the right to petition; the right to ask an agency to modify or to rescind a rule.

That is about all anyone has proposed in connection with rule making, and there is no great area there for difference.

Mr. GWYNNE. What about the retroactive effect of regulations?

Mr. McFARLAND. That is quite a subject in itself.

Mr. GWYNNE. Do these bills provide that the individual is protected against that?

Mr. McFARLAND. Yes; there is provision respecting that in one or two of the bills. In connection with retroactivity, there are various problems. One is the retroactivity of curative regulations.

Now, to repeat, there are two kinds of administrative operations, the legislative operation called rule making which we have discussed, and adjudication which is sometimes called an accusatory procedure. That is a procedure where an agency comes forward and points its finger to a given person or to a company and says, "You have sinned and we will proceed to try you."

In connection with adjudication, all these measures provide that notice shall be given; and there is no dissent to that. The Attorney General's committee gives a great deal of attention to administrative notice. It thought that administrative notices were rather seriously deficient and made recommendations for greater specificity. None of the measures attempt doing more than point out that persons should be notified of the time, place and nature of the proceedings, the authority under which the agency is acting, and the issues.

Secondly, in connection with the accusatory proceedings or adjudication, all the measures provide that the procedure shall be twofold: First, an opportunity for informal settlements, so far as the nature of

the proceeding may permit, and if that does suffice, then a hearing. But none of the measures, I think, with one exception, provides that the procedure in respect to adjudication shall apply to any case unless Congress has specifically, by some other statute, required an administrative hearing. But if the case is required by statute to be heard by an administrative agency, all of the various bills provide that the hearing shall be conducted in a certain way. First, upon notice; second, upon specified procedure.

The thing that causes most comment in this field is simply the matter of separation of functions. That is the old question of the judge-prosecutor-investigator combination. There are a great many misconceptions about the judge-prosecutor combination. In the first place, it is not applied in some of the bills to the formulation of rules as distinguished from accusatory procedure. But all of them apply it to the latter. The same may be said respecting license applications.

Several proposals have been made. The first is that there be absolute separation of the administrative prosecution arm from the judicial arm—in other words, that the agency should be constituted on the model of the old Board of Tax Appeals and the Bureau of Internal Revenue: Let one do the investigating and the other do the deciding. The minority of the Attorney General's committee differed mainly on that one point. The late President Roosevelt, in 1937 I believe it was, also made a rather sweeping proposal to the Congress to take all agencies and separate the deciding from the prosecuting and administrative functions. None of the bills here attempts to adopt that technique, but they do adopt what is known as an "internal" separation of functions. That is, they rely solely on an injunction to the agencies that in all accusatory proceedings the prosecutor-investigator should not take part in the decision process other than in open court, as it were.

The last incident of adjudication is the matter of declaratory orders. There seems to be general agreement that the agencies ought to have no authority to issue declaratory orders. But there has been one field of difference in connection with declaratory orders, and that is whether or not they should be mandatory or discretionary. However, declaratory orders will necessarily be given or withheld in the sound discretion of administrative agencies. They may be improvidentially granted. They may be improvidently refused. The whole question is simply what form of language would best express the authority that ought to be conferred.

I have mentioned the first main subject of "information" and the second main subject of "operation." Now, there are a series of what you might call subsidiary matters. There is the question of appearances, the question of subpoenas, and things of that kind. I think it is unnecessary to take the time of the committee on those subjects, except to say one thing: There seems to have been a great deal of misconception about the matter of appearances.

A great deal of complaint has been received from two sources. Number one is the lay practitioners before the various agencies, chiefly the Interstate Commerce Commission, who are afraid something might be said that would oust them from practice. On the other hand, there is a great deal of protest from the committees on unauthorized practice of the law in various State, local, and municipi-

pal bar associations who are just as vehement in saying that these measures fail to recognize that legal procedure must be confined to lawyers. But these bills do not eliminate the lay practitioner, if the administrative agency feels they have a function to perform and desires to admit him to practice.

Mr. WALTER. You say "if the agencies feel they have a function to perform." Do you mean by that you would require members of the bar in good standing in the court of last resort in the State to submit an application to practice before people who are probably not qualified to be admitted to the bar, as are their members?

Mr. McFARLAND. I was not speaking of the bar at all; I was speaking of nonlawyers. On the subject you raise, Congressman Walter, we do not feel we should take any position on that, either.

Mr. WALTER. Do not you think it might be well to incorporate in this law a provision that would make it possible for any member of the bar in good standing to practice before any agency, without being required to submit a formal application?

I ask that question for this reason—not because it has happened to me two or three times, because that is immaterial; but I know of instances where members of the bar, very reputable men of high standing and great ability, have come here with clients and been refused permission to practice and have been compelled to go into Washington and hire some specialist only because somebody had passed on the qualifications of this alleged specialist.

Mr. CRAVENS. Let me say that H. R. 339 and H. R. 1117 provide against that situation. They provide that any attorney in good standing in any Federal court, or the highest court of a State, do not have to make application.

Mr. McFARLAND. Congressman Walter, there is a question whether or not that might be included; but, as a group of lawyers, we do not wish to be in the position of asking for any special protection for lawyers.

The CHAIRMAN. You do not want to do that in this bill?

Mr. McFARLAND. That is right.

The CHAIRMAN. What is to be done about it does not concern this hearing.

Mr. CRAVENS. The provision to which I refer does not exclude anyone else from practicing besides lawyers; it merely says if a man is a lawyer, then he does not have to go through the routine and rigmarole that lots of those fellows do, and get a little card.

Mr. McFARLAND. Now, all of these measures have defined the operations of the agencies in two respects. All of these measures contain sections on hearings and on decisions. The hearing section usually provides—I think they all provide—that the case may either be heard by the top men of the agency or by examiners who may have certain powers, and so on, for reducing the matter to record. The only serious question in all of the bills relating to hearings is the question of the rules of evidence. The rules of evidence furnish material for more debate, almost, than any other subject in this field.

Mr. WALTER. In that connection, I have always felt that perhaps the way to meet this situation would be to provide expressly that the rules of evidence in the District of Columbia shall be the rules.

Mr. CRAVENS. No; do not impose that on us.

Mr. WALTER. Well, they have very good rules,

Mr. McFARLAND. Thinking on that subject has gone through a good many stages. There is a good deal of suggestion that the equity rules should apply, because that means a court without a jury, and I believe some of the agencies, either by statute or by their own rules, apply the equity rules as they exist in the District of Columbia. Then there has been another distinction some people have attempted to draw between the rules of evidence and the principles of evidence, and some have even mentioned "standards" of evidence. The difficulty is, however, that you can find no body of Federal rules, standards, or principles of evidence.

The Attorney General's committee took the position that the agency should admit or should rely only on relevant, probative, and reliable evidence. Those are the three words which they use to make up the standard, and the courts have used them. We are inclined to believe that is about the best formula that can be devised.

On the matter of decision: As I say, all of these measures contain sections on hearings and sections on decisions. In connection with decisions, there is an interesting difference between measures that are now pending and those which grew out of the Attorney General's committee. The Attorney General's committee had the idea that if a subordinate official were to hear the case he should absolutely make the decision. The theory of that was that, having heard the case, he was the logical party to decide it. The second theory was that only by giving the examiner the deciding function could you give him enough stature so that he would become a real figure in the operation of administrative justice.

The bills, those that have been introduced subsequently, do not adopt that absolute requirement. They provide that the agency can decide whether the examiner should decide the case or merely recommend a decision. That seems to us the sounder approach because we are not prepared to say that there may not have to be adjustments and there may not have to be differences in different kinds of cases; and furthermore we think that it is probably immaterial whether the subordinate official who heard the case makes the decision or whether he simply recommends a decision.

There are various proposals regarding sanctions, which I think we could pass over because no particular controversy has developed.

Most people are somewhat puzzled about just how the examiner should be selected and how his tenure should be secured. The separation of functions, I think, can be reduced to a formula. The selection of an examiner has not reached that stage of agreement.

Several proposals have been made. The proposal in many of the bills is for a simple civil-service status. The Attorney General's Committee on Administrative Procedure proposed a special office to approve examiners and to exercise the power of removal. That officer, called a director, was to be appointed by the President and confirmed by the Senate; and there are to be two ex-officio members.

Mr. WALTER. On the other hand, is there not the danger of the man having in mind possibly that he can be removed; might be subject to the influence of somebody in the office of the Administrator?

Mr. McFARLAND. This question has been discussed, I suppose, with more sincerity and less heat than almost any other question.

The third proposal has been made recently, and that is that either the selection or the approval of the examiner be vested in some official appointed by the Judicial Conference. That was put forward as a rather good solution because it would fit into what was conceived to be a nonpolitical office and therefore would require less provision concerning how it should operate. However, that presents a very serious constitutional question as to whether you could have the Judicial Conference make the appointment of an executive official when the Constitution vests the power of appointment only in the President, the head of a department or of a court. The Judicial Conference is not a court.

Perhaps the solution will be ultimately either civil service or some official or officials appointed by the President with the consent of the Senate if you are going to have a special group where selection of examiners is made or approved.

The CHAIRMAN. Mr. McFarland, may I ask a question before you leave that subject: I believe everyone regards it as one of the most important suggestions proposed. If you are going to guard the selection of the examiner as is proposed, would you be able to get before any court that reviews the matter a finding of fact made by the examiner as distinguished from the determination of the facts by the agency itself that makes the determination?

Mr. McFARLAND. I believe all the bills anticipate that the examiner's decision or recommendation shall, including the finding of facts, be a part of the record.

The CHAIRMAN. Anyhow that can be taken care of.

Mr. McFARLAND. Yes.

Mr. CELLER. Do I understand the Attorney General's committee wants all decisions or determinations of the agency to be filed before the court?

Mr. McFARLAND. As I mentioned, they might not be decisions, they might be tentative decisions or recommendations.

Mr. CELLER. It would be an agency, a tribunal of some sort, to pass upon and make a determination. I understood you to say that you wanted that; but that would be the contrary view?

Mr. McFARLAND. I must have expressed myself incorrectly. The Attorney General's committee, which ceased to function 4 or 5 years ago, recommended that the examiner make the final decision forthwith. We felt, and I think the bills provide, that the agency should itself determine whether or not the examiner should make the decision.

Mr. CELLER. Then I misunderstood you.

The CHAIRMAN. In the event the agency itself has functioned, or is to make a determination, is it contemplated that the agency, if it appears from the record that additional facts are needed, shall take additional testimony?

Mr. McFARLAND. Yes.

The CHAIRMAN. Under such a situation is there an arrangement in the bill that the findings of fact by the examiner will go up as a part of the findings of fact of the agency itself rather than the final judgment to be considered?

Mr. McFARLAND. I am positive that should be done.

Mr. GWYNNE. Mr. McFarland, I notice that H. R. 1203 does not cover temporary wartime agencies. Is it not true that those are the

agencies that really are giving rise to the thing that you are trying to correct? This does not cover temporary wartime agencies.

Mr. McFARLAND. No.

Mr. GWYNNE. Such as the OPA. I cite that as exhibit A to the statement I just made. Do you think it would be impractical to apply this bill to special agencies of that kind?

Mr. McFARLAND. Well, personally I used to think that the bill should apply across the board. I was dissuaded from my view, and the view of our committees is that they ought to be exempt. I think there are some practical reasons for doing that. I think perhaps exemptions ought to be of a definite determination, as of a certain time. No measure of this kind can be put into operation over night and by the time it really gets to operation, presumably, the war-agencies problem will be moot.

Mr. CELLER. Some agencies may continue after the war. Some people think the OPA may have things to do for some time after the war, and do you not think there ought to be some provision with respect to such agencies as the OPA or the WPB if their activities continue beyond the war?

Mr. McFARLAND. I think if you examine this measure very carefully you will find that the OPA and other war legislation fits into it very nicely, and that their operations will not be unduly injured in any way.

Mr. WALTER. This is not for the record.

(Off the record discussion.)

Mr. GWYNNE. It seems to me that the support for some of this legislation comes from the general public who are dealing with the very activities you propose to exempt, such as the OPA, the ODT, and these agencies which now touch everyone.

Mr. WALTER. With the cessation of hostilities whatever measures remain after the war can be covered.

Mr. McFARLAND. Now I might get to my last subject in these bills. I started out—I hope I am not burdening you by repetition—by saying that we have three divisions: Information, Operation, and Review.

On judicial review, I think these statutes and proposals would be very disappointing to most people. I personally have never thought the field of judicial review was the whole content of administrative law. Comparatively few people can reach that stage—

Mr. WALTER. Of course, Mr. McFarland, the possibility of review—

Mr. McFARLAND. I was just about to say that of course, it is necessary, because it stands there as a sentinel, you might say.

Mr. WALTER. And has a very salutary effect, you might say.

Mr. McFARLAND. But I still make this point, that review is just one part of this subject. If you had only a provision for review and no provision for administrative operation, you would have very little for the courts to review. No court could say a certain procedure should be had, if no statute or no constitutional provision says a certain procedure is required. Review does not provide procedure. We do need these other things if you are going to have a rounded system of administrative operation.

But any provision for review will be disappointing to many people. We think there must be a section on judicial review within the statute; we think it will be very helpful; we think it will simplify the subject

to the extent of indicating to the lawyer or businessman or farmer or laborer who may be involved that his rights of review are of such and such a kind; but we do not believe the principle of review or the extent of review can or should be greatly altered. We think that the basic exception of administrative discretion should be preserved, must be preserved. We believe that about all the statute should or could do would be to state the form of action, the type of acts that are reviewable in accordance with the present law, the authority of the courts to grant temporary relief so that review may be useful, but that the scope of review should be as it now is.

Mr. WALTER. You say "as it now is." Frankly, I do not know what it now is; and I do not know whether the rule as laid down in the Consolidated Edison case is the law, or what the law is. I am not saying that because the Supreme Court apparently changes its mind daily, but what is the rule?

Mr. McFARLAND. Well, there are several different aspects of review. Most people think the substantial evidence rule is the only rule that is important. That is only one of the several aspects of the rule on review.

The CHAIRMAN. I am going to have to go directly and you are going to have to go directly, too, but could you indicate to the committee the judgment of you and your associates as to what would be reviewable by the courts under the provisions of this bill?

Mr. McFARLAND. What would be reviewed?

The CHAIRMAN. That is right; what would be reviewed. And it has been suggested that I add to my query the extent of review. For instance, here is an individual or business that has gone through the administrative mill and is dissatisfied with what has happened. He believes the determination in his matter was against the facts and against the law, and you have this record of the determination by the investigator and possibly some supplementary evidence. Now, when the court sits in judgment, is the court to be limited more than the courts ordinarily are limited when they are determining the facts of a disputed situation?

Maybe I could illustrate what I am talking about. A great deal of public complaint is that when people finally reach the courts the courts look around to see if there is any sort of evidence to support the determination of the agency and, if it does find some evidence to support the determination of the agency, the determination of the agency is upheld. A good many people believe the courts ought to consider the whole field and weight of the evidence in determining the question in controversy, if it is reviewable.

Now, how far toward the latter or how close to the former do we propose to go in this regard?

Mr. McFARLAND. I assume you are thinking of a situation in which the review takes place on the administrative record; that is, the agency has heard evidence, has heard witnesses, received the documents, and made up the record. The court's review is therefore confined to that record. There are other cases, of course, where the agency does not make a record and the court tries the thing *de novo*. We are not speaking of the latter.

The CHAIRMAN. Not at the moment; no.

Mr. McFARLAND. We are speaking of the case where the agency has made up the record.

The CHAIRMAN. Just there: Is it proposed to have the court make an examination to determine whether or not the record, the structure of the record and the action of the agency in making the record, is in itself a fair thing to the person who has to make the determination?

Mr. McFARLAND. It is. That is one of the categories of review, I think, in all these bills.

The CHAIRMAN. Then when you get into review, how does the court weigh the evidence in reference to the determination?

Mr. McFARLAND. I assume you are not asking me as to the mental processes of the court.

The CHAIRMAN. No, sir; I would not like to do that. I would not like to ask anybody to try to find the mental processes of some of our courts.

Mr. McFARLAND. The standard rule, of course, with respect to the review of administrative agencies is the review by the district court or the circuit court of appeals of whether or not there was substantial evidence to support what has been done.

Mr. WALTER. Now, there are two schools of thought. On the one hand, you have those who would permit a decision of an agency to stand where it is based on evidence, maybe evidence that is a mere scintilla of evidence; on the other hand, there are those who would have the decision given the same weight as is given that of an examiner in chancery.

Mr. CRAVENS. And the third——

Mr. WALTER. Oh, no; they are the two positions.

Mr. CRAVENS. There is the third position that we give the review court the right itself to weigh the evidence and reach an independent conclusion.

Mr. WALTER. That follows necessarily.

Mr. McFARLAND. The word "substantial" is a perfectly good word. If people do not give it its due weight, that is their fault. I do not think you can improve on that language.

The other rule that is so often discussed is the preponderance-of-evidence rule, or the weight-of-evidence rule. But the difficulty there is that it would cause about as much difficulty as help. Suppose you have the preponderance-of-evidence rule. As far as we can make out, that means weight of the evidence, the number of——

The CHAIRMAN. Not the number of witnesses.

Mr. McFARLAND. It does not mean the number in the narrow sense.

The CHAIRMAN. In Texas, where I used to practice, we always argued that way.

Mr. McFARLAND. I do not see what you can possibly gain.

The CHAIRMAN. Well, is not that the function of the court in examining with reference to the evidence; that is, to determine which way does the scale break when they weigh the evidence?

Mr. McFARLAND. To be sure, it is the function of the trial court to weigh the evidence, because it has to make the decision; but any reviewing court has a different problem.

Mr. GWYNNE. You could not substitute his opinion for the opinion of the first trial court.

Mr. McFARLAND. Naturally.

Mr. CRAVENS. I think what we are trying to find out is, in your judgment, based on your experience, is judicial review adequate which is

based upon a finding by the reviewing court that there was substantial evidence to support the facts as found by the agency below?

Mr. McFARLAND. That is right. That does not mean, as we sometimes hear it said, that they look only to certain pages of the record. You might have in the record something which would sustain the judgment; on the other hand, there might be incontrovertible evidence in the remainder of the record which utterly destroys it. The review must be of the whole record in the sense that any part of the record can be called upon.

Mr. WALTER. What do you think of the scope of review in H. R. 1206, at page 53 of the bill?

Mr. McFARLAND. I should say that reflected the present judicial rule. (At this point the bell rang for a call of the House.)

The CHAIRMAN. Mr. McFarland, you have made a wonderful presentation on the subject of administrative procedure, but if there is anything additional you could add to the statement you have made that would give additional information to the committee, we would be glad to have it.

Mr. McFARLAND. May I submit in writing an additional statement?

The CHAIRMAN. You certainly may; yes, sir; but, before we adjourn, do you feel there is something additional you ought to say at the moment?

Mr. McFARLAND. I do not.

The CHAIRMAN. It seems to us you have covered the field and have done a wonderful job.

(After informal discussion the committee adjourned until tomorrow, Friday, June 22, 1945, at 10:30 a. m.)

ADMINISTRATIVE PROCEDURE

MONDAY, JUNE 25, 1945

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The committee met at 10 a. m., Honorable Hatton W. Sumners (chairman) presiding.

The CHAIRMAN. The committee will be in order, please.

We have this morning, I believe, as the first witness, Dr. Splawn, of the Interstate Commerce Commission. Dr. Splawn, will you be good enough to favor us with your observation about this matter.

STATEMENT OF WALTER M. W. SPLAWN, COMMISSIONER, INTERSTATE COMMERCE COMMISSION

Mr. SPLAWN. Mr. Chairman and gentlemen of the committee, I shall detain you only for a few moments.

My name is Walter M. W. Splawn. I am Chairman of the legislative committee of the Interstate Commerce Commission. On behalf of the Commission I express our deep appreciation that you have met this morning to hear the Commission and the representatives of the Practitioners' Association of the Commission.

We have in the Interstate Commerce Commission two committees interested in the subject matter of the bills which are now under consideration: The Legislative Committee and the Committee on Rules and Reports.

When you sent the bills down to the Commission the Chairman referred them to the Legislative Committee and we recognized that we had on our committee one member, Commissioner Mahaffie, who is also a member of the Committee on Rules and Reports, and by asking for the two senior commissioners, whom we would have asked for, for reasons that will be obvious, we expanded the Legislative Committee to include also the Committee on Rules and Reports. I will take just a moment to tell you who this expanded committee of five are.

The experience I have had in administrative procedure has been acquired as a member of the Railroad Commission of Texas, special counsel for the Committee on Interstate and Foreign Commerce, and as a member of the Interstate Commerce Commission.

Chairman John L. Rogers, member of the Legislative Committee, began his career in the Commission in the Bureau of Locomotive Inspection. He was later an examiner in the Bureau of Service; then executive assistant to the Federal Coordinator, and was the first Director of the Bureau of Motor Carriers, and as a member of the Commission he is the Commissioner through whom that Bureau reports to the Commission.

Commissioner Charles D. Mahaffie was, at one time, for a period of years, Solicitor of the Department of Interior; about 10 years he was the Director of the Bureau of Finance, which Bureau, as you know, aids particularly division 4. To that division is assigned the group of statutory regulations dealing with securities, directorates, the issuance of certificates of convenience and necessity to extend lines or permit the abandonment of lines, and various other allied statutes, all of which involves various procedures. As a member of the Commission for about 15 years, Commissioner Mahaffie, among his other duties, has been a member of the Committee on Rules and Reports; and the Commissioner in charge of the Bureau of Finance and the Bureau of Accounts.

Commissioner Claude R. Porter, one of the senior Commissioners, is a member of the Committee on Rules and Reports. At one time in his young manhood he was an Assistant Attorney General of the United States. For a period of years he was general counsel for the Federal Trade Commission where he assisted them in working out their procedures, and for almost 20 years has been a member of the Interstate Commerce Commission. He has, for a good part of that time, been on the Committee on Rules and Reports; the Commissioner in charge of the Bureau of Law and the Bureau of Inquiry, and has been interested in the matter dealt with in these bills.

Our senior Commissioner, Clyde B. Aitchison, was appointed to the Commission in 1917; he is perhaps the dean of all administrative officials in the Federal Government. Before he came to the Commission, some 28 years ago, he was solicitor for the Association of Railway Commissioners, and during that time the State commissions and the Interstate Commerce Commission were working together in administering the recent act to make an evaluation of the railroads of the United States.

Commissioner Aitchison, as solicitor for the State commissions, went through all of the conferences working out the procedures for the administration of that important statute. For seven and a half years before he was retained by the State commissioners he was a member of the State Commission of Oregon. As a member of the Interstate Commerce Commission he has handled every variety of the Commission's work, and is chairman of the Committee on Rules and Reports. For many years he has been most active in all matters pertaining to the organization of the Commission and the allocation of the work of the Commission. He has been a constant and constructive student of administrative procedure. He was a member of the Attorney General's committee to which reference was made here last Thursday, and the Attorney General made him a member of his subcommittee.

He is, by selection of the Judicial Conference, headed by the Chief Justice of the Supreme Court, assigned to a committee of that conference to study judicial reviews, and possible changes in the reviews provided under the Emergency Deficiency Act of 1913.

In the Seventy-seventh Congress, first session, when the Senate Committee on the Judiciary was considering their bills 674, 675 and 918, Commissioner Aitchison was the spokesman for the Commission, and during the time in which he analyzed those bills for the subcommittee he expressed what was then the hope of the Interstate Commerce

Commission that the bills might be amended so as to exclude the Interstate Commerce Commission. At that time he expressed on behalf of the Commission the thought that it should be excluded, but he also voiced our hope that if we were not excluded some possible amendment might be made under which we could work.

After further study and particularly the study of your revised and improved bill, H. R. 1203, we have reached the conclusion that we were correct in asking Commissioner Aitchison to voice our views in the Seventy-seventh Congress to request the exclusion of the Interstate Commerce Commission from whatever bills you may report, and to that end we have addressed to you a letter prepared by our legislative committee to which I have referred. A copy of this letter is already before the members of the committee, and at this time we respectfully request that the letter be incorporated in the record.

The CHAIRMAN. It will be incorporated in the record.

(The letter referred to follows:)

HON. HATTON W. SUMNERS,

JUNE 22, 1945.

Chairman, Committee on the Judiciary,

House of Representatives, Washington, D. C.

MY DEAR CHAIRMAN SUMNERS: Responsive to your request for comment on H. R. 1203, introduced by yourself, may I advise that this bill has been considered by the Legislative Committee of the Interstate Commerce Commission. Upon request of that Committee, the Commission added to its membership for the consideration of bills pertaining to administrative procedure our two senior Commissioners, Clyde B. Aitchison and Claude R. Porter. These two Commissioners with Commissioner Mahaffie also constitute the Commission's Committee on Rules and Reports. On behalf of the Legislative Committee the following comments are offered:

On the general question of the need of something in the nature of a code of procedure to govern the various agencies of the Federal Government which exercise administrative functions, we express no opinion. We assume that you seek from us an expression with respect to the probable effect of a measure of this kind on the work of this Commission in its administration of the Interstate Commerce Act and related statutes.

We respectfully request of your committee that the Interstate Commerce Commission be excepted from any bill such as this which your committee might see fit to report favorably. There is a precedent for such an exemption in the complete exclusion of the Commission from the Logan-Walter bill some years ago. Likewise, it will be recalled that the earlier administrative procedure proposals sponsored by the American Bar Association and its Administrative Law Committee excepted proceedings before this Commission. We reached this conclusion after careful consideration of H. R. 1203. The possible changes referred to yesterday during the course of the statement by Mr. Carl McFarland, as set forth in a committee print of S. 7 of May —, 1945, if adopted, would still make difficult the work of this Commission.

The Interstate Commerce Commission is the oldest of the administrative agencies of the Government. Throughout the 58 years of its existence it has given continuing study to its procedure, as a result of which it has devised and put into effect a number of procedural methods which are well understood and which have, we believe, the support of those who have dealings with this Commission.

The Commission is not merely a kind of court for the settlement of controversies between individuals or those to which the Government is a party. It is an administrative tribunal with the broader responsibility of carrying out the national transportation policy declared by Congress in the Transportation Act of 1940. It has numerous other duties under divers acts of Congress. In functioning it is called on to perform numerous and varied duties demanding widely different forms of administrative procedure, each suited to the nature of the particular circumstances. Some of these procedures have been used for many years, others are comparatively new, and some are yet in the experimental stage, but all have proved reasonably satisfactory, and their operation is understood by those who must use them. That this is so may be judged by the fact that the Commission's

General Rules of Practice adopted July 31, 1942, have been in effect for nearly 3 years since we promulgated them, having had the benefit of much consideration by our bar, and that no weakness has developed that required amendments. If the lawfulness of these procedural methods must now be judged by a code not designed simply to supplement the jurisdictional requirements of the Interstate Commerce Act, but to cover as a blanket all agencies of the Government having administrative powers, many of which differ substantially in nature and purpose from those committed to this Commission, inevitably there will be a long period of uncertainty and confusion while the effect and meaning of numerous statutory provisions susceptible of varying interpretation are being judicially ascertained. If there is anything in the bill which would better our practice, we would be swift to adopt it. But no one has made any such suggestion to us.

Throughout its history the Commission has striven to obtain the broadest and most accurate possible factual basis for its official acts, generally through the quasi-judicial device of a hearing and argument on issues of fact presented, even when by statute a hearing is not mandatory. Our experience has not indicated the need for a more elaborate body of rules to insure fairness. We see a danger in a code which would center attention on matters of form and detract from the important objective of reaching a sound conclusion on facts.

Our study of H. R. 1203 leads us to the conclusion that its enactment in either its original or revised form would have an adverse effect on the performance of our functions. In fact, it apparently would make impossible the performance of some of our important duties. Under the Interstate Commerce Act the Commission now has flexible powers "to conduct its proceedings under any provision of law in such manner as will best conduce to the proper dispatch of business and to the ends of justice." Section 17 (3). We regard this flexibility in procedure as of highest value in the public interest. A code of rigid requirements would forbid it.

A recital of the obscurities, ambiguities, and impractical requirements of this bill would make too long a letter. One feature, the scope of review in enforcement proceedings, seemingly would put the Commission back where it was in the impotent stage preceding the Hepburn Act of 1906. The review provisions run counter to the ideas which are being worked out by the judicial conference. We mention these as merely illustrative. We, therefore, earnestly request that the Interstate Commerce Commission be excluded from this bill.

Respectfully submitted.

[S] WALTER M. W. SPLAWN, *Chairman*,
CLYDE B. AITCHISON,
CLAUDE R. PORTER,
CHARLES D. MAILAFFIE,
JOHN L. ROGERS,
Legislative Committee.

Mr. SPLAWN. In that letter we asked to be excluded from whatever bill you may report.

Commissioner Aitchison, in presenting our views, will point out the long period of time you have given to the consideration of statutes providing for procedures for the Interstate Commerce Commission. For more than half a century the Congress has been continuously engaged, from time to time, in prescribing those procedures. We believe those statutes to be satisfactory when tested under the headings discussed here last Thursday: Public Information, Operation, and Court Review. We believe you have already attained, insofar as the Interstate Commerce Commission is concerned, the objectives announced last Thursday.

I do not believe you want to pass mere repetitive legislation, a sort of fifth wheel procedure. If that were the only result it would not be so bad, but as Commissioner Aitchison and Mr. Ames of the Practitioners' Association will point out, we believe the consequences are much more serious. Mr. Rosenbaum, representing a group of nonlawyer practitioners, also has a statement.

I know, and other members of the legislative committee know substantially what Commissioner Aitchison will say to you and may I advise that we are in agreement with the statement he is going to make.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Dr. Splawn.

Commissioner Aitchison, we will be glad to hear you.

STATEMENT OF CLYDE B. AITCHISON, COMMISSIONER, INTERSTATE COMMERCE COMMISSION

Mr. AITCHISON. Mr. Chairman and members of the committee, I should say that I have been more than identified by Dr. Splawn.

The CHAIRMAN. You are very well identified.

Mr. AITCHISON. As this statement has not been submitted to the Bureau of the Budget, the usual reservation is made that I do not know if it is consistent with the policies of the President.

Virtually seven bills are pending, as we understand H. R. 1203 has been tentatively revised. Their numbers are in the record.

Time has not been available, consistent with other duties, for me to study all of these as I should, nor, as we understood the chairman, does the committee wish now to go into the details of the bills. These details are of great importance as they affect the administration of the many laws as to which we function as an arm of Congress. Many of these details were discussed in my testimony before Senator Hatch's subcommittee of the Senate Committee on the Judiciary, Seventy-seventh Congress, first session, on S. 674, 675, and 918, pages 412-474, if the committee wishes to refer to that statement, made on behalf of the Commission of which I am a member.

The CHAIRMAN. What is the date of the statement, Mr. Aitchison?

Mr. AITCHISON. I believe it was April 29, 1941.

The CHAIRMAN. What was the purpose of the bills to which you refer?

Mr. AITCHISON. One, No. 675, was the so-called majority bill of the Attorney General's Committee on Administrative Procedure.

The Chairman. Yes.

Mr. AITCHISON. No. 674 bore the lower number, was the minority bill of that committee; and No. 918 was a mysterious bill. We never were able to find out who fathered it, although there was a suspicion; it was a matter of common repute.

The letter which Commissioner Splawn has mentioned specifically is directed to the chairman's bill, with the amendments which last Thursday we understood were suggested by the office of the Attorney General. Naturally I speak only for and of the Interstate Commerce Commission and its work, and I do not know how these bills would affect any other agency.

What often is lost sight of in discussing this subject as a generality is the great variety of matters which have been entrusted to the Commission. The Interstate Commerce Act itself is in four parts. The original act, passed in 1887, has been amended more than 40 times. Each of the four parts comprises many diverse functions. In addi-

tion to that act, the Interstate Commerce Commission has duties under many supplementary acts.

Let me call to mind some of these functions, all specific requirements of the Congress. The Elkins Act; joint Board action in connection with the Civil Aeronautics Board; audit of sums due certain carriers under the Transportation Act of 1920; coordinate and cooperative functions with the bankruptcy courts in reorganization or debt adjustment proceedings as to railroads; enforcement and implementations of certain provisions of the Clayton Act; fixation of boundaries of the standard time zones; approval of loans of certain kinds to be made by the Reconstruction Finance Corporation; formulation of regulations for the safe transportation of explosives and dangerous articles by common carriers; giving consent to reforms in parcel post zones, rates, etc., suggested by the Postmaster General; fixation of compensation to be paid railways, and urban and interurban electric railways, for carriage of the mails; construction and operation standards for railway vehicles to be observed by railroads; enforcement of the Safety Appliance, Power Brake, Ash Pan, Locomotive Inspection Acts and the block signal resolution; Hours of Service Act; and (under the regulations promulgated by the President), the Medals of Honor Act; and classifications of employees and subordinate officials under the Railway Labor Act and other acts.

All of these mentioned are completely outside the Interstate Commerce Act, and they each involve the making of rules or of adjudications, as I now understand those terms are meant, or both.

The CHAIRMAN. Do you operate under rules in each of those responsibilities to which you have referred, a set of rules that preceded the activity?

Mr. AITCHISON. I think so. I can answer that in more detail when I come to answer your Honor's question with respect to the matters which I expect to deal with.

The CHAIRMAN. Thank you.

Mr. AITCHISON. Within the Interstate Commerce Act there is an equal variety of functions, relating to many different types of transportation agencies and to their patrons; matters concerning the records of carriers; uniform accounting practices; depreciation charges; uniform bills of lading and livestock contracts; contents of annual and periodical reports of financial and operating statistics; issuance of certificates of public convenience and necessity or permits for construction, extension or operation by rail, highway, or water, or common or contract carriers, or brokers, or as a freight forwarder; proceedings for abandonment of line or operation; control of numerous types of financial matters—consolidations, mergers, leases, acquisitions or control and transfer of operating rights; interlocking directorates, approvals of stock and bond issues; approval of the insurance offered by motor common carriers; forms of traffic, and relief from the rules governing them; credit to shippers; the long-and-short-haul clause; valuation of carrier property; safety regulations for motor vehicles and their operators; emergency service orders as to railroads, motor carriers, and water lines; car service rules; these are all subjects which are within the act itself; they involve rule making or adjudications, or both, and they are additional to the general powers of the Commission with respect to rates. And by no manner of means is this a complete list, or even an adequate summarization of the functions.

With respect to a great many of these diverse functions, Congress has specifically laid down a form of procedure which it considered to be adequate and adapted to the type of function. As these functions are different, the procedures which control them are quite naturally and necessarily different, and they must be different if administration is to be efficient and fair. To the extent that it is possible to subject these all to a general procedural rule, we believe this has been done by the Commission's general rules of practice, and we do not know how we can go further. We think the rules are adequate and satisfactory.

The CHAIRMAN. May I ask if there is any difference in these rules as they apply to the various subheads of your responsibility?

Mr. AITCHISON. Oh, yes.

The CHAIRMAN. They affect the right of appeal to courts?

Mr. AITCHISON. The right of appeal to the courts is provided by the Urgent Deficiencies Act of 1913, sometimes referred to as the District Court Jurisdiction Act, and there have been many decisions by the Supreme Court with respect to various types of orders, growing out of that act.

The CHAIRMAN. My question is has there been any variation in the right of appeal on the part of the aggrieved person who is affected by these different activities which you mention?

Mr. AITCHISON. Yes. I think I can answer that best by saying that in a number of cases the Supreme Court has said the nature of the subject matter is such that the order is not really reviewable at all, as you find in the fixation of compensation to be paid for the transportation of the mail, as my friend Mr. Miller no doubt remembers, in the case of *United States v. Griffin* (303 U. S. 206). That is perfectly sensible; there should not be any review, because if it goes to the Court of Claims the matter is tried there and it is not upon review of the Commission's order.

Mr. WALTER. Suppose the matter is arbitrarily or capriciously handled, should there not be a review allowed first?

The CHAIRMAN. What Mr. Walter is driving at is this: Should not the matter be inquired into before damage is sustained about which the matter is taken to the Court of Claims?

Mr. AITCHISON. If the matter is arbitrarily handled or capriciously handled, there is a deprivation of constitutional rights, and of course the complainant would not recover in the Court of Claims.

Mr. WALTER. Suppose a damage has been suffered before?

Mr. AITCHISON. The damage would be good only if there is a review.

Mr. WALTER. If the appeal was a supersedeas.

Mr. AITCHISON. But the determination of the Commission, in the case I have mentioned, is retroactive; it goes back to the time of the filing of the petition.

Mr. WALTER. We understand that, but still damage has been sustained and the only redress then comes through the prosecution of a suit in the Court of Claims.

Mr. AITCHISON. May I say, Mr. Walter, as far as I am concerned I do not believe that it makes one bit of difference whether review comes then or following the presentation by the carrier against United States for compensation for carriage of the mail.

Mr. WALTER. If it does not make any difference then why are you objecting to it?

Mr. AITCHISON. I am not objecting. I say with regard to that it is only a question as to how far the Congress wants to make the Urgent Deficiencies Act go. The Urgent Deficiencies Act speaks of any orders of the Commission, but Justice Brandeis pointed out that an order of that character is not reviewable in the absence of a congressional declaration, as are other orders which are of the character such as I mentioned.

Another is the fixation of the status of employees of a railroad, to inquire whether or not for the purposes of the Railway Labor Act, on the one hand, or the Social Security Act on the other, an electric interurban common carrier falls within the exception of the Railway Labor Act. Now, the Congress has left it to us to make that determination. It could have left it to somebody else.

The CHAIRMAN. The notion is that if it was left to the court, with respect to the making of such orders the court would be making railroad rates?

Mr. AITCHISON. There would be a great deal of difficulty about it. We function both in a legislative and in a judicial capacity in the treatment of these rates, and very often in just a few moments. As I say, we think the rules are adequate and satisfactory. We know of no additional general procedural regulations which could be adopted for the benefit of our practice, covering all of these diverse functions. If any should be brought to our attention we will change our rules very quickly so as to incorporate them.

The CHAIRMAN. Do you have any semipublic hearings with reference to these rules?

Mr. AITCHISON. Yes; I shall go into detail with reference to that.

The CHAIRMAN. I do not want to interrupt your presentation.

Mr. AITCHISON. I shall go into that in detail.

Mr. WALTER. May I ask you a question at this time: Several years ago when the subject matter of this type of legislation was under consideration, Mr. Gwynne and I looked at these rules and we had an idea if the amendment were adopted that we followed pretty closely your procedure.

Mr. AITCHISON. I think it is much of the same type.

Mr. WALTER. And if we are following very closely the procedure as it applies to the Interstate Commerce Commission why are you objecting to the legislation?

Mr. AITCHISON. I am not objecting to the legislation; our feeling is, as Commissioner Splawn has already stated with respect to the Interstate Commerce Commission, that the subject has already been anticipated by the Congress and that these bills which you have before you have provisions in them which will make our work much more difficult, and will not facilitate it at all.

Mr. WALTER. We had an idea that we were flattering you.

The CHAIRMAN. Making it applicable to all of these other people and I suppose you had the notion that you did not want to exclude the pacemaker.

Mr. AITCHISON. Well, I simply can say that careful study of the bill prepared by the American Bar Association does not persuade us that it contains a single new feature which could help by being added to the general rules of practice.

Mr. GWYNNE. In that connection, H. R. 1203, as I understand the purpose, is to lay down certain minimum requirements of procedure.

Mr. AITCHISON. Yes.

Mr. GWYNNE. And if you meet those minimum requirements already how are you injured?

Mr. AITCHISON. We do not meet the general requirements in their entirety and we could not, and that is what I want to deal with before I get through.

The CHAIRMAN. May I suggest, Mr. Aitchison, that you take up that matter now. The questions of the members indicate what is troubling our minds and if you can get quickly to the matter that is causing difficulty to the committee it would be very helpful.

Mr. WALTER. I think one question might clarify the whole situation if I may be permitted to ask it: Do you object to the elimination of your present practice of conferring with the examiner before he makes a report?

Mr. AITCHISON. We do not do that.

Mr. WALTER. You do not do that?

Mr. AITCHISON. No. But the bill goes a whole lot further than that, Mr. Walter.

Mr. WALTER. Yes.

Mr. AITCHISON. That is not the thing that is bothering us at all.

Many features of the American Bar Association bill are distinctly inapplicable, as we regard them, and some would definitely impede our work.

I would like to say this, with reference to the general approach of the bill. Congressman Walter had indicated that in earlier legislation they were copying as much as possible the Interstate Commerce Commission's procedure, for which I am humbly grateful, and yet with all due respect I want to say a couple of things about the general approach of the Bar Association's bill. I can be frank, I think, because I have been a member of that association for 20 years. I think quite probably and naturally the draftsman was thinking of rate controversies, or fights over certificates of convenience and necessity or grandfather rights, or possibly he had other agencies of the Government chiefly in mind, and he drafted his bill on the theory that the administrative functions to be dealt with are controversies between the agency and private people, or controversies between private people. Not minimizing the fact that there is often plenty of controversy, the basic theory of the whole Interstate Commerce Act is that the main function of the Commission is one of investigation—a search for facts, in order that the proper standard of Congress then may be applied.

The CHAIRMAN. But you act on the findings of the Examiner.

Mr. AITCHISON. Yes. That is merely one part of my discussion.

The CHAIRMAN. A determination must be made upon findings; the findings are used as a basis of your determination.

Mr. AITCHISON. But I want to point out, Mr. Chairman, that last Thursday we were told when we investigated we pointed our finger at a person and said, "You have sinned," or "You are guilty."

The CHAIRMAN. Well, we do not pay any attention to those things.

Mr. AITCHISON. The whole theory of the bill that is drawn by the American Bar Association is—

The CHAIRMAN (interposing). Mr. Aitchison, if you will permit an interruption, we hope to hear the subject matter discussed. The matter has been considered by Mr. Gwynne and Mr. Walter, and they have introduced bills and they know much more about it than the chairman, whose name is attached to the particular bill. We are just trying to find out what should be done about the subject matter.

Mr. AITCHISON. Without going into all the details, Mr. Chairman, I would like permission to have the reporter, if he will, copy into the record a few references with respect to which we do adjudicate controversies after having been investigated with reference to the public interest, and, if I may, I ask permission to have that copied.

The CHAIRMAN. Yes; we will be glad to have you do that.

Mr. AITCHISON. I even have a reference to the statute that goes to the matter of payment of our expenses.

(The matter above referred to is as follows:)

I quote (the references are to U. S. C., title 49):

"Section 13. (1) That any person * * * complaining of done or omitted to be done * * * in contravention of the provisions [of this pt. I of the act] may apply to said Commission by petition, * * *. [Then follow provisions for service of the complaint with directions to satisfy or answer.] If such carrier * * * shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

"(2) Said Commission shall, in like manner * * * investigate any complaint forwarded by the railroad commissioner * * * of any State, * * * and the * * * Commission shall have full authority at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made * * * or concerning which any question may arise * * * or relating to the enforcement of any of the provisions of this part. * * *"

The same language—"investigation"—is used in section 13 (3) and (4), when State rates are concerned; section 15 (1), which authorizes orders by the Commission; section 4 (1), relief from the long-and-short-haul provisions of the act "in special cases, after investigation"; section 19a, valuation of carrier properties.

To show how all pervasive is this concept, I find that it appears even in making provision for allowance and payment of "necessary expenses for the transportation incurred by the Commissioners, or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington * * *" (sec. 18 (2)).

These are all from part I of the act. Corresponding language appears throughout, in the other parts of the act. This has been the traditional point of view of Congress from the beginning of the act, in 1887, and it is the view of its functions which the Commission holds. It has to be that way, for proceedings before the Commission are not matters of private litigation, but of public concern. (*A. J. Phillips Co. v. Grand Trunk, etc., R. Co.*, 236 U. S. 662; *Pennsylvania R. Co. v. Stineman, etc.*, 242 U. S. 298). And the Commission represents the public (*Sacramento Merchants Association case*, 242 U. S. 178, 188) which can never be defaulted by a procedural lapse by a private person or even by his lameness of presentation, let alone by his agreements (*Procter & Gamble case*, 225 U. S. 282). Congress and the Supreme Court have emphasized this over-all view by the importance which now attaches to the national transportation policy declared by Congress, in the light of which all the provisions of the Interstate Commerce Act are to be administered. I repudiate absolutely for my agency the suggestion that "investigation" is "accusatory action."

The CHAIRMAN. Does this bill or do any of these bills hamper you in the discharge of your duty as an investigator?

Mr. AITCHISON. Yes; because they say anybody who investigates shall not perform other functions.

The CHAIRMAN. Won't you come to that point of how they hamper you?

Mr. AITCHISON. Why, it would take the entire Commission in. That is our whole job—to investigate.

The CHAIRMAN. We understand that.

Mr. AITCHISON. We are all ruled out, therefore. The only way we could act would be to make ourselves counsel and get on the other side of the table——

The CHAIRMAN. You mean this proposed legislation would create some board of investigators other than those you select?

Mr. AITCHISON. No, not that; but the language of the bill is drawn with the intent of excluding investigating functions entirely from the functions of adjudication.

Mr. WALTER. That is because some of us dislike having one person be prosecutor, judge, and jury.

Mr. AITCHISON. Quite right, and we do not want to be prosecutor, judge, and jury, and we think under the Interstate Commerce Act our duty, as specified over and over again—no less than seven times, I thing, in the last act you passed, the Freight Forwarders Act—to investigate matters that are brought to our attention carries with it the duty to do so with an open mind. And that is the way we approach these subjects. For my agency, I want to repudiate the idea that on an investigation which the law requires us to make we are prejudices or prosecutors; we are inquirers.

The CHAIRMAN. I think everybody appreciates the high type of service rendered generally by your Commission, Mr. Aitchison. We are trying to find out what we are to do here with our job.

Mr. AITCHISON. Passing that, then, my second observation is directly connected with the last statement, the one we have just been discussing.

First, the whole tenor of H. R. 1203 is negative; it is restrictive as to what the agency must do and what it shall not do. It is a retrograde step from the theory that has applied generally in the Interstate Commerce Act, which has favored flexibility of procedure in the sound discretion of the agency of Congress in which responsibility has been lodged. And remember we take pride in the fact we are an arm of Congress. With the exception of two lines, 12 and 13 on page 18, which are absolutely unnecessary because the law implies them anyway, there is nothing in the bill even hinting at facilitating the work of the administrative agency. I should also except the somewhat indirectly expressed authorization of the agency to delegate the power of initial decision to subordinates. This I should prefer to see expressed directly and not inferentially. But even this leaves in doubt the question whether the relatively recently adopted similar provisions of section 17 of the Interstate Commerce Act will be repealed by necessary implication, for they cover the same subject in a different way and provide what may be delegated, to whom, how the delegates shall act, and how their acts shall be reviewed, and it is a different procedure from what is contemplated by H. R. 1203.

The CHAIRMAN. When your investigators conduct an investigation and come to make a report, do they receive any assistance or direction from any other person or any other part of your organization with reference to the type of report they should make?

Mr. AITCHISON. Now, you might just substitute me for "investigator." That is what I do. When I go out to hear a case, I investigate. I have tried many cases. I investigate the facts, and do not think I am beyond the bounds of the regulatory powers of the Commission, at all. It is my job to go out and get the facts. As I told one young gentleman who objected to my questioning, I told him the story of Judge William Gaslin, of Nebraska, who set aside a verdict of a jury for a loan shark who had a quitclaim deed when, in reality, it was a mortgage. He set that aside and said, "It takes 13 men to steal a man's farm in this court."

The CHAIRMAN. I do not know from that just what the answer is to my question.

Mr. AITCHISON. I do not myself take directions from anybody.

The CHAIRMAN. That was not quite my question.

Mr. AITCHISON. Nor does our examiner when he writes a report.

The CHAIRMAN. Why should anybody be directing him as to what sort of a report he should make?

Mr. AITCHISON. They do not. But this bill would prohibit him from talking the subject over at all in the same general way that judges do when they come into a lawyer's office on a hot Saturday afternoon in the summertime and say "I have a case that is bothering me," not telling what it is, and discuss the general subject.

The CHAIRMAN. Maybe I do not have the picture well in my mind, but I thought these investigators who went out for your organization performed a service somewhat similar to that performed by a master in chancery, who goes out and investigates the facts and submits for the guidance of his principal some finding of facts and probably of law, and then the principal takes that and determines from that what ought to be his judgment.

Mr. AITCHISON. When a report is made, then, of course, there is opportunity for the parties to file exceptions to it and those exceptions are heard before the agency itself.

The CHAIRMAN. Dealing, however, with the making of the report and what transpired before this report was filed.

Mr. AITCHISON. May I perhaps illustrate by a recent experience of of my own which would be forbidden, by the way, by this bill. I heard the case involving the rates on coal from certain areas to Youngstown, Ohio, a very important case because it was claimed it was a key rate. I had assisting me an examiner of the Commission. The case was on my docket and I presided, and at the end of the submission of the facts I stated that the proposed report would be prepared by the examiner who sat with me, and he would prepare exactly the sort of report he wanted to prepare and would do it without consultation with me and on his own responsibility, because I wanted to keep my mind open until I had had the benefit of the examiner writing up the facts, telling what conclusions he thought ought to be drawn, letting the parties except, and letting the matter be argued before the Commission, as it finally was. I wanted to keep my mind open.

The CHAIRMAN. Is that the practice?

Mr. AITCHISON. That was satisfactory to all concerned and was done.

The CHAIRMAN. You, see, that is what people who have matters pending before these various agencies seem to want to have done, and we have had a good deal of complaint, whether justified as founded on

facts or not, that these examiners are not free to make an independent report, but they have a good deal of "coaching" from their superiors; they feel they would get into a lot of trouble if they did not report like their boss wanted them to.

Mr. AITCHISON. I can only speak with respect to my agency, and with respect to my agency I quote from the witness stand Mr. Dean Acheson's testimony before the Senate committee, in which he went into this very question Your Honor is addressing himself to, and said the examiner of the Commission was entirely free, if he wanted, and there would be no reprisals, to put out a report holding that the Commission was an unconstitutional body. They have many times suggested that decisions of the Commission in the past should be reversed.

The CHAIRMAN. Then if we should have legislation which would require that sort of procedure, it would not handicap any agency to act under it?

Mr. AITCHISON. It would not, only that the law goes further and says because I sat in that case up in Pittsburgh trying to find out something first hand in respect to the facts, I ultimately had to assume the responsibility, and I and I alone, unaided by anybody else, had to draw the report in that case. That is too much.

The CHAIRMAN. You mean you were sitting as a commissioner?

Mr. AITCHISON. That, sitting as a Commissioner, I would be a subordinate official under this act.

Mr. GWYNNE. In connection with that very case, you were sitting as a judge if you were going to make the decision, but did you have to go and round up evidence and present the case?

Mr. AITCHISON. No.

Mr. GWYNNE. Do not you have people to do that sort of thing?

Mr. AITCHISON. I did not need to in that sort of case, because, when we get a hot coal case, they all see that the facts get before you.

Mr. GWYNNE. Of course, a judge sitting in an equity case for an injunction is really conducting an investigation, is he not?

Mr. AITCHISON. Certainly.

Mr. GWYNNE. Except that someone represents one side and someone represents the other side, and finally the judge decides what the result should be through his investigation. Cannot you do that in your organization—receive the facts from one side and leave the other party to bring the facts on the other side, and you decide it?

Mr. AITCHISON. Oh, yes. But is the public interest to be defaulted because of the lameness of the presentation? I do not think it ought to be before the ICC.

Mr. GWYNNE. Right there——

Mr. AITCHISON. Now, wait a minute. When we discover, in one way or another, when in cold blood we sit down and study this record, or the examiner studies the record as he did in this Pittsburgh case, and see that by inadvertence, a material fact has been omitted, and that the parties had not addressed themselves to it, we try to get the facts complete in the record. The examiner in that case brought the matter to my attention, and I caused a letter to be written to each party and asked them to endeavor to stipulate with respect to that fact. If they cannot stipulate with respect to the fact, the case may be reopened and they will be heard on it. But it was our responsibility to get all of the facts.

The CHAIRMAN. Surely. That is a commendable thing to do. Would there be anything in this proposed legislation that would prevent that procedure?

Mr. AITCHISON. There would.

Mr. WALTER. Where?

Mr. AITCHISON. In that case, the examiner would not have been permitted to have gone to the documents where he found all that out.

The CHAIRMAN. Where is that, because I would not want anything that has my name attached to it to have that result?

Mr. AITCHISON. Because it was a matter of the exact mileage from one particular district to another district where a given rate was in effect, and the question was largely one of rate comparisons.

Mr. WALTER. Just point to the section in these several bills that would make impossible the thing you have done.

The CHAIRMAN. And, if you can do that, that is helpful. I want you to know the questions I am asking are not asked in any antagonistic attitude at all. I am trying to develop the facts that I do not know about from the people who do know.

Mr. HANCOCK. I think it is page 7, line 13, subsection (c).

Mr. AITCHISON. There are two places in there that will have to be brought together; section 5 (b) on page 7—

Mr. GWYNNE. No; section (c).

Mr. AITCHISON (reading):

The same officers who preside at the reception of evidence pursuant to section 7 shall make the recommended decision or initial decision pursuant to section 8 * * *.

That would have forced me to have written the report in that case, although it was eminently better that I keep my mind open and let the examiner, a thoroughly competent man, study the record and give the parties something to shoot at.

Mr. SPRINGER. Is there any provision in any of the bills, other than the one to which you are now referring, that relates to this same subject?

Mr. AITCHISON. Yes; what I call the more monastic segregation provision. I think I will come to that.

Mr. WALTER. Is it a usual practice for a commissioner to conduct investigations?

Mr. AITCHISON. In many of them we do—as many as we can. We should conduct more, if possible. And, Congressman Walter, in that same connection, while we are talking about this examiner, he happens to be in the room here, and he is the assistant to Commissioner Splawn on the legislative committee, and he also is assistant to Division 1 with respect to administrative matters. He keeps thoroughly posted on matters of this sort and as I interpret this bill he would be forbidden to perform those duties.

Mr. SPRINGER. Do I understand that you, as one of the Commissioners, go out and interview witnesses, prepare the case, and so forth?

Mr. AITCHISON. No.

Mr. SPRINGER. How far do you go in that respect?

Mr. AITCHISON. I go out and hear what the parties have to say.

Mr. SPRINGER. But do you participate in collecting the evidence or getting it ready for presentation?

Mr. AITCHISON. Most assuredly. Of course, in valuation cases we do the whole thing, and the statute uses exactly the same language

with respect to valuation as it does with respect to hearing complaints. The difference, of course, is that normally the pros and cons can be developed in the particular kind of thing that the people who drafted this bill had in mind—can be developed by an adversary proceeding. But when you come to draw one act, and take into consideration matters such as evaluation, safety appliances, and the like, you are doing more than I would like to try to do.

The separation of functions is on page 8.

Mr. FEIGHAN. To what bill are you referring?

Mr. AITCHISON. H. R. 1203.

Mr. FEIGHAN. At page 7.

Mr. AITCHISON. If you will indulge me, I will endeavor, before I finish, to get to that. I think I have that a little later here; if not, I will find it before I leave the room. But clearly the minority of the Attorney General's Committee, in its bill 674, had definitely in mind when a man heard a case he was to take that record and that record alone and talk to nobody. Of course, he should not talk to the parties. If they come in and try to talk to me, they go out of my office in a hurry. But the intent of the bill is that he should not even talk to the people around the building; he should not consult our chief counsel with respect to a question of law; he should not consult the Director of the Bureau of Traffic, or one of our tariff experts with respect to an interpretation of a tariff, or how to find his way around one of those thick documents, and the like.

Mr. CHIEF. They should not do it, but do they do it is the question.

Mr. AITCHISON. We have the word of Mr. Dean Acheson, [p. 818, his testimony] which fortifies mine that they do, and that was after a very long examination made by the Attorney General's Committee.

I do not understand that there is any claim with respect to ICC examiners having gotten illicit information. What good would it do them? They have to put it in the report and that report is only a proposed report and the parties can except to it. And if he has gone outside the record or has said anything that is not substantiated by the record, they can point to it and have a chance to argue, both in writing and orally. And if a division, even, goes off wrong on that, they have a right to ask for a review by the entire Commission with respect to it.

Mr. WALTER. This whole question was very thoroughly discussed by yourself in conference with the Attorney General's committee when it made its inquiry some time ago, and I was under the impression that H. R. 1206, which is the recommendation of the minority of that committee, adequately dealt with this very thing.

Mr. AITCHISON. I feel, Congressman, I would not be doing myself or yourself, as author of that bill, justice if I attempted to discuss the details of the bill; because, frankly, since I was told I was expected to appear before the committee, I have not had an opportunity to study these bills as I should.

I understand in general that H. R. 1206 is similar to S. 674.

Mr. WALTER. Yes; it is.

Mr. AITCHISON. To the extent it is similar, I can simply refer you to the testimony which I gave before Senator Aiken's committee, and the statement filed on behalf of the Commission.

Mr. GWYNNE. This provision about the separation of functions simply restates the law which the courts have been following for 1,000

years, does it not? In other words, the courts have been functioning under that program of prosecution being separate from decision. Do I understand you cannot function under that?

Mr. AITCHISON. What I am calling attention to is the fact that the word "investigate" is a word which in the Interstate Commerce Act is used probably 30 times as comprehending the whole scope of the duties of the Commission under the act, and I do not think the draftsman means to have in mind the same meaning for it; he means probably the prosecuting functions. And if you go into the prosecuting functions, I can have no objection. But with respect to "investigate", when the law casts on every one of us and on every man we send out as our delegate the duty of making an investigation under the act, I just do not see how that will work there.

Mr. WALTER. May I call your attention to the language which I understood was drawn as a result of the statement you made at the Attorney General's Committee hearing on page 34 of H. R. 1206 where it is provided:

Those heads, members, officers, employees, or representatives of any agency engaged in presiding at hearings or formulating findings and decisions in the course of formal proceedings shall not consult or advise with agency, counsel, investigators, representatives, or employees except upon notice to all affected parties and in open hearing or otherwise as provided herein.

Now, what can hamper the functions of your agency if that language is written into law?

Mr. AITCHISON. In the first place, I think there is a little mispunctuation there that ought to be straightened out. I suppose what is intended is "agency counsel."

Mr. WALTER. Yes.

Mr. AITCHISON. But passing that and taking out the comma, does that mean I cannot call in our chief counsel and ask him what his general view of the law is?

Mr. WALTER. No, sir; it does not mean that. You have a perfect right to do that.

Mr. AITCHISON. He is the agency counsel.

Mr. WALTER. You have a perfect right to do it after you tell the other side you are going to sit down and make inquiries.

Mr. AITCHISON. And "employees": When the parties have cited a mass of tariffs, that I have to be omniscient enough to read through them all, to go into the file myself and find them, or can I ask his advice to dig up rates for me?

Mr. WALTER. You can do that under this language.

Mr. AITCHISON. By asking everybody to come in?

Mr. WALTER. No; by telling them you are going to have a hearing on a certain day for the purpose of inquiring into whatever it is. And I doubt very much if everybody who is notified or anybody who is notified would appear; still they would have a right.

The CHAIRMAN. Mr. Aitchison, your notion is that in the performance of your duties you are an agent of the Congress and in ascertaining facts the nature of the job is such that you cannot proceed too much as a court; you have to be less formal than a court.

Mr. AITCHISON. I think we must be less formal than a court.

The CHAIRMAN. And you have to have freedom of action and liberty of judgment as to where you get the facts when you need them to supplement your own information?

Mr. AITCHISON. That has been the settled principle since the act to regulate commerce was enacted in 1887.

The CHAIRMAN. What this committee is trying to do, and it is a hard job—it does not want to handicap any agency, of course, but there is a good deal of complaint that in these inquisitorial agencies—and yours is largely of that sort; you do that which amounts to a rendition of judgment resulting in shifts of ownership, or infringement of interest and right—that those people who ascertain the facts ought to make the reports and ought to make reports that are matters of record and those reports ought not to be made at the suggestion, directly or indirectly, to any degree of those who finally have to sit in judgment to determine what ought to be done under the report.

That is the complaint that comes to us, that in these agencies too frequently those who are to act as judge influence the type of report that goes into the record.

We are right at the point now, as I understand from those gentlemen who are more familiar than I am with the matters in controversy, that gives us the trouble and where you can render us the most assistance.

Mr. WALTER. Mr. Aitchison, as I understand it, in each of these inquiries the decision affects only the parties to that particular proceeding?

Mr. AITCHISON. No; they affect the whole public.

Mr. WALTER. But if the same question or a similar question arises in another case, is not there another hearing, or are you bound by precedent?

Mr. AITCHISON. No; they are not.

Mr. WALTER. Are you bound by precedent, having decided the issue in A, B, and C, that that is the law with respect to D, E, and F?

Mr. AITCHISON. When we recently had *Ex parte 148*, an application of all the railroads and the motor carriers of the country for a 10 percent increase in rates, we had certain applicants who were participants, but it affected everybody in the country whether he was there or not, and we represented the public. The Supreme Court said so; they told us that is our duty in the Sacramento case with respect to the long-and-short-haul clause.

Coming to this question about the man who hears and the writing of the report, this is my observation on that: In the first place, I do not believe that before the Commission they have exactly the situation which has given trouble with respect to some of the other agencies. I am speaking from hearsay, of course; but to a most considerable extent what comes before us is statistical and documentary testimony. Oftentimes it is reduced to writing, submitted to the opposing parties in advance of the hearing; frequently it goes in without a single line being read out loud, even, and the question being asked "You prepared this statement?" "Yes." "Is there objection to this being copied in the record?" "None at all, Your Honor." "The reporter will copy it in."

Now, what is sacred about the man who sits in the chair making the decision in a case of that sort when the record is made up that way?

Again I want to ask a very practical question. You take one of these great rate cases, such as that, not little cases, but in one of

those cases where they have 500 counsel appearing and where they have 1,000 witnesses, and where 1,000 other witnesses take advantage of the rule of procedure we announced and have submitted verified statements in lieu of personal appearance, cross-examination being waived, when it is necessary in short order, because perhaps \$2,000,000 a day is involved, for us to cover the entire country, and when we have several simultaneous hearings going on, by everybody's consent, as the only practical thing to do—and not alone with their consent, but approval—a hearing going on on the Pacific coast, on the Atlantic coast, and in the South, and four of them in some central place, and then we adjourn to other places, covering the entire country in a short time: Who is the officer who hears those cases; what officer is going to write the report?

The CHAIRMAN. Now, what does happen with that report, and so forth? Does that simply come in and then the Commission has to take it up?

Mr. AITCHISON. In a case of that sort, in the last one we had, Commissioners Mahaffie, Splawn, and myself were the committee—

Mr. WALTER. Before you go into that, may I answer the question you asked?

Mr. AITCHISON. Yes.

Mr. WALTER. The report would be written up by the four, five, or six examiners, each dealing with the particular phase of inquiry he is acquainted with.

Mr. AITCHISON. The probabilities are the only acquaintance he got was a one-sided one by hearing certain witnesses who say something in the testimony, and not hearing the other side of it. The other side will probably be going on before another examiner, and necessarily so. We do not clean these things up—

Mr. WALTER. The answer to your question is very simple, as I see it. Certainly there would be a conference between all of the examiners; if one man heard one side of the question and another man the other, obviously the two men who heard both sides would sit down together and write their recommendations.

Mr. AITCHISON. I am afraid that is forbidden.

Mr. WALTER. Just point out where that is forbidden.

Mr. AITCHISON. Because they are forbidden to confer with each other.

Mr. WALTER. Oh, no.

Mr. AITCHISON. They—

shall not consult or advise with agency counsel, investigators, representatives, or employees except upon notice to all affected parties.

Mr. WALTER. That is right.

Mr. AITCHISON. When they come to drafting the proposed report, to which parties are going to be entitled to file exceptions, or when it is an emergency matter of this sort as the Commission itself has to accept the responsibility of making the initial decision, like that big rate case I talked about, do they have to call people in to sit down and have 500 people before them, helping them to write the report?

The CHAIRMAN. What you do in that case, Mr. Aitchison, you take the reports which have been made to you, as you said, each of the investigators perhaps covering some phase of the matter, and they come to you and are considered by you in their consolidated form?

Mr. AITCHISON. That came to the committee constituted by Commissioner Splawn, Mahaffie, and myself, and together we prepared the draft of report which was submitted to the Commission. But, before that, the entire Commission had heard argument on that.

The CHAIRMAN. Would the entire Commission hear argument on it before they had the consolidated facts before them?

Mr. AITCHISON. Before they had the report?

The CHAIRMAN. Yes.

Mr. AITCHISON. That gives me a good opportunity to say what I think is the thing that has given a great deal of concern to our practitioners, and so on.

In cases of that kind that we handle, it is oftentimes quite a good thing in the public interest to let people tell their story and get it off their chest and let it be understood, whether or not it would comply with the strict rules of evidence; and we do get lots of that kind of thing in.

The CHAIRMAN. In that sort of situation, you take the argument and the facts presented in the course of argument and consider them together with the reports made to you by the various examiners, and base your conclusions upon all of those?

Mr. AITCHISON. Yes. What the record is is really an armory of facts; and when they come to the presentation before the division, or before the Commission as a whole, the parties draw out of that armory the facts they want to use, and they do that either in their briefs or oral presentations.

The CHAIRMAN. When that matter then reaches the court, what constitutes the facts that are considered by that court? I am afraid I have a rather involved question, because the situation seems to me rather involved.

Mr. AITCHISON. Under the Urgent Deficiencies Act, you mean?

The CHAIRMAN. I do not know—

Mr. AITCHISON. That is the one which governs the majority of our cases.

The CHAIRMAN. I think I will stand on that question. Under any act, when you get to the court, what would the court consider with reference to the finding of facts?

Mr. AITCHISON. The court in the case of the Urgent Deficiencies Act does not go into the facts unless the party moving for a review puts the entire record before the court. And then the court examines for the purpose of seeing whether the well known standards have been met; otherwise it does not go into the facts.

Now, with respect to other classes of cases where there is no record, there obviously we have quite a different situation and there seems to be a line of authority that in a case of that sort the court can take testimony de novo, to inquire whether the order of the Commission was a reasonable one.

The CHAIRMAN. Is that in a case where there is no record?

Mr. AITCHISON. Yes; and there are many, of course, that have to be. For instance, all of these emergency orders that are made from day to day, they are made out of the air from our general knowledge of the transportation situation. They have to be.

The CHAIRMAN. On that particular point, would you have any difficulty in operating under the provisions of this proposed legislation?

Mr. AITCHISON. With respect to judicial review?

The CHAIRMAN. No, sir; with respect to the applicability of the general provisions in this proposed legislation?

Mr. AITCHISON. I am not wholly certain whether they have gotten this out or not, but there is a rather curious thing. I notice, I believe, that in one of the sections of H. R. 1203 certain acts are entirely exempted; that is, wartime acts and acts which do not go beyond a given date in 1947.

The CHAIRMAN. My question was do you think that the making of those emergency determinations dealing with emergency situations would be either prohibited or the agency would be handicapped in doing its work if it feels it is necessary to do it quickly and based on your judgment as to what you do upon your general knowledge, as you have heretofore indicated?

Mr. AITCHISON. It certainly would in these great rate cases I have mentioned.

Mr. WALTER. Well, those decisions that are made without a hearing are in the nature of preliminary decisions, are they not?

Mr. AITCHISON. No; they are final. When you tell a carrier to put on an embargo at a given point, and not move anything in there, that stops movements instantly; or if you have a flood and they tell the carrier to disregard the shippers' routing instructions. They could complain about such an order. But we have collected more than a quarter of a million dollars in fines for violations of them. Three cases went to the Supreme Court—one, the P. Koenig Coal case, the other the Avent case, and the Michigan Portland Cement case.

Mr. WALTER. Do you have the citations?

Mr. AITCHISON. Not at the moment. Justice Holmes, I believe, said "But the order of the Commission must be reasonable." But the offense there was a discrimination because they did not obey the order of the Commission with respect to one person and did obey it with respect to the others.

The CHAIRMAN. What I am trying to get at myself is, Are the requirements of this proposed legislation such as to interfere with the quick exercise of your discretion?

Mr. AITCHISON. In Ex-parte 148, for instance, we took testimony in a case which involved applications for a 10 percent increase in rates, fares, and charges. We took the entire amount of testimony in 41½ days, and the following Monday the Commission was out in St. Louis to hear arguments, and heard the arguments and the arguments took longer than it did to take the testimony for the reason I have already indicated. That could not be done under this.

The CHAIRMAN. We have the picture of that case. Now, what provision in this proposed legislation would interfere with that character of procedure?

Mr. AITCHISON. The provision, for instance, that the proposed report should be issued by the agency before it decided. We would have had to come back here to Washington and, instead of deciding the case, would have had to decide what kind of proposed report we would make.

Another thing: You have authorized us, in order to avoid these discriminations between State and interstate, to avail ourselves of the advice, cooperation, and assistance of State commissions. Now, is

that to be cut out so that these officers will be not permitted to avail themselves of that, in order to avoid conflict between State and interstate?

The CHAIRMAN. I do not think this committee would knowingly recommend legislation which would prevent you from availing yourselves of any assistance. That is what we want to try to avoid.

Mr. WALTER. A moment ago, Mr. Aitchison, you testified in a proceeding recently you were not satisfied with the evidence that had been adduced and you personally conducted an inquiry. Is that because you had an idea of what the decision should be and wanted to get the evidence in order to substantiate your conclusions?

Mr. AITCHISON. Not at all. But it was a question of what was a fair rate and that question was very largely dependent upon comparison of rates.

We found a case where there was an opportunity to amplify circumstances and conditions, but the matter was not in the record. If we were the Supreme Court of the United States we would take judicial notice of the fact. But under this bill we are required to take official notice of facts but we are forbidden to ask anybody what those facts are.

The CHAIRMAN. I would expect you have notified everybody.

Mr. AITCHISON. If an examiner should find it necessary, in connection with his proposed report, to find out some things, why should he notify that individual in advance?

There is a long article published in a law journal, written by Mr. Davis, in which he strongly takes us to task because that sort of thing has not been done.

The CHAIRMAN. Who is Mr. Davis?

Mr. AITCHISON. That is Professor Davis, now with the University of Texas. He was an investigator for the Attorney General's committee and for the Board of Investigation and Review.

Mr. GWYNNE. Would you agree that the prosecuting functions should be with the court?

Mr. AITCHISON. In general, when it comes to the making of a decision. Of course we cannot simply set up a bureau and let it go without any administrative supervision at all.

Mr. GWYNNE. You are objecting principally to the use of the word "investigator".

Could not some amendment be put in that section which would make it very clear that that is limited only to the prosecuting part of it?

Mr. AITCHISON. Or, say, investigation with a view to prosecution.

We investigate matters for Congress. The House will pass a resolution asking us to investigate.

Mr. GWYNNE. Could not an amendment be offered which would overcome that objection?

Mr. AITCHISON. I think possibly it could be done. But I am taking the bill as I find it.

Commissioner Splawn has spoken of the very long consideration which has evolved this procedure.

I do not feel like taking the time of the committee to go through each of the items in the first part of my statement and evaluate them.

The CHAIRMAN. You have been very helpful to me, personally, and I am sure to other members of the committee in discussing these matters with reference to your procedure.

Mr. AITCHISON. The respective procedures prescribed in the Interstate Commerce Act govern a considerable body of the Federal administrative law business of the country. And those procedures have grown to be what they are over a very long period as the result of co-operation between Congress and the courts and the Commission for 60 years, aided by numerous outside official and private surveys and critiques. Other than acts relating to the Judiciary and to public revenues, it can be doubted if any procedural questions have been considered in Congress as frequently, as earnestly, and as ably as the procedures of the Commission as treated in the succession of acts which changed the experimental act to regulate commerce into the present Interstate Commerce Act with its four parts. Saying nothing of the many bills which were presented and received earnest consideration by the committees of the two Houses, but failed of adoption, and omitting minor acts, we have successively the original Collom Act, based on the experience of the States and of Great Britain under the common law; the amendments two years later, 1889; the Hepburn Act of 1906, with five volumes of hearings; the Mann-Elkins Act of 1910; the District Court Jurisdiction Act of 1913; the LaFollette Valuation Act of 1913; the Car Service and Commission Organization Acts of 1917; the many proposals for reorganization of the functions of the Commission made to the committees of both Houses near the close of Federal control; the Transportation Act of 1920; the Hoch-Smith Resolution; the Emergency Transportation Act of 1933; the studies and three long reports of the Federal Coordinator of Transportation; the Motor Carrier Act of 1935; the Transportation Act of 1940; the Freight Forwarder Act of 1942; and, finally, the bill now favorably reported and on the Senate calendar, which will make some minor procedural changes in the act.

The Interstate Commerce Act, amended more than 40 times, has had a prolonged general legislative overhauling on an average every 5 years, and it will probably be continued to be overhauled.

As I have said, at the present time there is a bill pending in the Senate, favorably reported, which makes some modifications in that procedure. I think the same bill was passed by the House at the last session.

I think it safe to say, Mr. Chairman, without exaggeration, that in the sitting time of the House and Senate, in the aggregate, more than a year has been spent in the development of the procedure of the Interstate Commerce Commission and the substantive portions of the act.

With respect to the supplemental acts already mentioned, either Congress has subjected them automatically to evolving changes or procedures in the main act, or they are governed by special procedures which have been considered suitable for the precise subject. Nobody has suggested changing them except in this series of administrative law bills, the history of which was given last Thursday. I should also mention the more than 400 decisions of the Supreme Court which have gone far to shape the Commission's procedure.

I wish now to advert to the Commission's general rules of practice, which are applicable to these processes of rate-making, investigation,

or adjudication. They likewise are a growth, from the original code framed by Thomas M. Cooley and a former distinguished member of the House, affectionately called "Horizontal Bill" Morrison, and their colleagues.

Mr. WALTERS. You say your Commission has been overhauled once every 5 years. These amendments that have been adopted were largely procedural, were they not?

Mr. AITCHISON. Procedural?

Mr. WALTERS. Yes.

Mr. AITCHISON. Both procedural and substantive.

Mr. WALTERS. If Congress found it necessary to overhaul your agency as frequently as it has been overhauled, do you think a general law might obviate the necessity of our passing legislation such as this which is before us?

Mr. AITCHISON. There could not be a general law that would have obviated the necessity for amendments which are pending in the Senate bill which is now on the calendar.

But the question is as to the adequacy of the present rules. The Commission's rules are intended to be helpful, and the Commission's practitioners so regard them. They contain many "shoulds" and as few "musts" as possible. They are just the sort of a manual of procedure that would have helped me when as a young lawyer I went from Iowa out to Oregon and started practice, as I did, in an untried field.

We wrote them having always in mind that many of our practitioners are not professionally trained in the law. Their spirit is shown by rules 1, 2, and 3, reading as follows:

Rule 1. *Scope of rules.*—These general rules govern procedure before the Interstate Commerce Commission in proceedings under the Interstate Commerce Act and related acts, unless otherwise directed by the Commission in any proceeding.

Rule 2. *Liberal construction.*—These rules shall be liberally construed to secure just, speedy and inexpensive determination of the issues presented.

Rule 3. *Information; special instructions.*—Information as to procedure under these rules, and instructions supplementing these rules in special instances, will be furnished upon application to the Secretary of the Commission, Washington, D. C.

I do not believe that is the spirit the American Bar Association follows. I regret to say.

Now, to answer the question of Chairman Sumners, for light on how the directives of the agencies were established. I answer with respect to my own agency. The method employed in formulating the Commission's general rules of practice is, in general, that which has been followed by the Commission in the formulation of many of the regulations which the law requires shall be made.

Of course, if the statutes provides a particular method, or requires a hearing, or any other procedural step, that direction is followed. When a hearing is not in terms required, it is always accorded if the nature and importance of the matter makes it desirable. There are cases, such as those growing out of conditions of emergency, when the Commission has to act without hearings; informal conferences are held when possible. Sometimes the Commission must act on the basis of its own knowledge, and act quickly. The criticism which has come to us if of "formalism" in the conduct of these investigations which lead to the conclusion.

The CHAIRMAN. When you do act in emergencies, you base your action upon general knowledge, and do you file a statement of the facts on which you base your determination?

Mr. AITCHISON. In fact, the act permits that in a case of that sort.

But to recur to the manner in which most recent revisions of the rules were accomplished, as typical.

The general specification laid down in the act is significant. The Commission may adopt—

such general rules or orders as may be requisite for the order and regulation of proceedings before it, or before any division, individual commissioner, or board, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States.

That is section 17 (3).

I call particular attention to this language—

which shall conform, as nearly as may be, to those in use in the courts of the United States.

Mr. CHIEF. That is no guide, is it? It does not guide you, does it?

Mr. AITCHISON. I think it does. With respect to the matter of evidence, we are authorized to make rules with respect to evidence. I think evidence is comprehended within the scope of procedure, and I think there is authority for it.

Mr. CHIEF. You say you follow their rules of evidence in the courts as far as you can. Who determines what "how far" is, or when it shall be available, or how far these rules follow the procedure?

Mr. AITCHISON. That is a question that has to be determined by somebody.

Mr. McFarland is in error when he says there are no Federal rules of evidence. There are statutes of the United States which prescribe how matters that shall be established.

Mr. WALTER. I do not think he said that. I think he said there are no equity rules.

Mr. AITCHISON. There may be no equity rules but there is, as I recall—I believe the new civil rules of procedure provide for the rules formerly in equity, or the rules of the State where the hearing is being held, whichever is the more liberal, shall be applied.

Mr. WALTER. That is the substance of the rule?

Mr. AITCHISON. That is the substance of the rule. That, Mr. Congressman, we have woven into our rules of practice.

Mr. CHIEF. That rule does not give you much of a guide. Who will determine that? You and I might disagree on the question of liberality.

Mr. AITCHISON. Somebody has to decide that. When the Commission sets a procedure it gives the parties a focus on which they can argue the question.

We undertook a revision of our rules after the passage of the new Code of Civil Procedure. Following the Transportation Act of 1940 there was a somewhat general desire that the rules of procedure last published as an entirety in 1935, be consolidated and revised, and we undertook the task. The proceeding is carried on our docket as ex parte No. 55.

Recently there had been three searching outside examinations of the Commission's rules as they stood and had been administered: (1) By the staff and members of the Attorney General's Committee on

Administrative Procedure, (2) by the long hearings of the subcommittee of the Committee on the Judiciary of the Senate, headed by Senator Hatch, and (3) by the results of a wholesale canvass of members of our bar.

I will call some witnesses in reference to that matter. The Association of Interstate Commerce Commission Practitioners had a very competent standing committee on procedure headed by Mr. McFarland, who testified here last Thursday, and who as a member of the Attorney General's committee had become familiar with the Commission's practice.

A special committee consisting of Mr. La Roe, Mr. Turney, and Mr. Miller, who also testified on Thursday, was appointed by the association, and gave generously of time and skill to aid the Commission's Committee on Rules and our staff examiners, who, by the way, H. R. 1203 would have forbade us to utilize for this purpose, in drafting a proposed revision, because they performed under me.

Mr. GWYNNE. Are you not stretching that a little?

Mr. AITCHISON. I do not think I am; if I am stretching it, let us take it out.

Mr. WALTER. Leave it in the record.

Mr. AITCHISON. I am willing for my statement to stay in.

I understand that Mr. McFarland's report that it was informally agreed by his committee should function upon the request and in aid of the special committee so far as the new rules were concerned and to that end collected views as to the proposed rules of practice and transmitted them to the chairman of the special committee, on which Mr. Miller was sitting.

In passing, I note from this report of Mr. McFarland's committee that—

the imminence of war as it developed in the fall of 1941 and culminated early in December effectively suspended all legislative and most other activity on the subject of administrative procedure. While some investigations in the States proceeded, most associations of practitioners properly felt impelled to turn their attention to wartime legislation and administration. In common with the general movement, the committee on procedure of the Association of Interstate Commerce Commission Practitioners deemed it impracticable to do more than answer inquiries and perform such incidental functions as might be referred to it.

The proposed revision was given widest publicity, and comments were invited.

I do not wish to tire the committee, but I ask indulgence to quote from two general comments made responsive to the Commission's request: One statement was, in part:

The present rules of practice of the Interstate Commerce Commission have worked satisfactorily over the years, have operated fairly as to all parties before the Commission, and are familiar to and understood by the large body of persons dealing with the Commission. For these reasons it is not believed that any substantial change or revision in these rules is necessary, except as additional provisions may be required by reason of the enlarged functions of the Commission. However, if a complete revision is to be undertaken, the task should be approached in the light of the satisfaction given by and workability and practicability of the present rules.

That statement was made on behalf of the American Association of Railroads and the American Short Line Railroad Association, and among the signers was Mr. Miller, who testified before the committee on last Thursday.

I believe the comment filed by a member of the Attorney General's Committee on administrative procedure, Prof. Ralph F. Fuchs, is relevant:

In general I am impressed with the well-knit character of the rules, which are sensibly organized. They are also well expressed and easy to understand, at least for one who has familiarized himself with the functions of the Commission.

But the Commission did not consider this sufficient. The proposed rules and comments were set down for oral argument on the remaining narrow points of difference, and were argued for a full day, before Commissioners Porter, Mahaffie, Splawn, and myself. Then the entire Commission considered them and adopted them July 31, 1942, to become effective 45 days later. All this was in a proceeding as to which the law did not require any notice at all.

What was the result?

The rules have been in operation for nearly 3 years, and no one has moved for any change.

So much for the statutory and commission-made rules of procedure.

The CHAIRMAN. As a matter of fact, Mr. Aitchison, does this proposed legislation greatly change your functions in any way?

Mr. AITCHISON. Not our functions, but it does unduly change our customary practice in some respects, some things that we think are working well.

The CHAIRMAN. Your rules and regulations have developed under legislation enacted by Congress and as the result of your broad experience, have they not?

Mr. AITCHISON. We think so.

The CHAIRMAN. It has not been entirely without some legislative direction?

Mr. AITCHISON. We set these rules down for hearing before the Commission and the Committee on Rules and Reports, and as Commissioner Splawn explained to you, there is a full day's argument on the question of objections, and that gives us an opportunity to know just what the situation is.

What has been the result? The rules have been in effect for 3 years and there has been no proposal for any change in them.

Mr. WALTER. What rules would be nullified through the enactment of any one or all these bills?

Mr. AITCHISON. All the rules which deal with the manner of getting out a proposed report, and I think might have the effect of repealing by implication section 17 of the Interstate Commerce Act.

The CHAIRMAN. May I make an inquiry of Dr. Splawn? We have to close this hearing in a few minutes because the House will be in session.

Dr. Splawn, do you have some witnesses from outside of the District whom you want to present so they can go home?

Mr. SPLAWN. Mr. Ames, who will follow Commissioner Aitchison, resides in Washington, but Mr. Rosenbaum, who is from outside of the District and who represents the nonlawyer practitioners, may want to leave; I do not know about that.

He has a statement which he would like to put in the record, which he will make to the committee.

The CHAIRMAN. If he has a statement which he would like to put into the record he may file that statement.

Mr. ROSENBAUM. I do not have any written statement. I just wanted to call attention to certain matters that we consider an oversight on the part of the authors of these bills. I am not a lawyer, Mr. Chairman.

The CHAIRMAN. I do not think we could properly interrupt Mr. Aitchison's statement now, but if you could submit to me a brief written statement of these matters that you think you want to mention, the oversights that you have indicated, it would be very helpful.

Mr. ROSENBAUM. I will be glad to stay here a day or two if necessary, Mr. Chairman.

The CHAIRMAN. That is up to you.

Mr. ROSENBAUM. I came prepared to do that.

The CHAIRMAN. You want to appear as a witness in this matter?

Mr. ROSENBAUM. Yes, sir.

The CHAIRMAN. You can arrange that with Dr. Splawn. We can meet tomorrow morning.

Dr. Splawn, you can determine that and arrange it in any way you like. We have to go to the House now.

(Thereupon the committee adjourned, to meet tomorrow, Tuesday, June 26, 1945, at 10 a. m.)

ADMINISTRATIVE PROCEDURE

TUESDAY, JUNE 26, 1945

HOUSE OF REPRESENTATIVES,
COMMITTEE ON JUDICIARY,
Washington, D. C.

The committee met at 10 a. m., Hon. Hatton W. Sumners (chairman) presiding.

The CHAIRMAN. Mr. Aitchison, will you continue with your statement?

STATEMENT OF CLYDE B. AITCHISON—Resumed

Mr. AITCHISON. Mr. Chairman and members of the committee, shortly before adjournment yesterday, Congressman Walter asked me for citations to the three Supreme Court decisions involving emergency orders of the Commission. They are *Avent v. United States* (266 U. S. 127); *U. S. v. P. Koenig Coal Company* (270 U. S. 512); *United States v. Michigan Portland Cement Company* (270 U. S. 521).

These cases, as I recall it, were decided by a unanimous court. The first was by Justice Holmes, the last two were by Chief Justice Taft.

There was a fourth case which was cited in 270 United States, the Peoria and Pekin Union case, which involved the question as to whether certain operations were within the language of section 1, paragraph 15, of the act, and they held they were not. I did not have that case in mind when I spoke of the three cases yesterday to Congressman Walter.

Mr. SPRINGER. What was the page of the 270 U. S. case?

Mr. AITCHISON. There were two cases, pages 512 and 521.

I then wish to make clear that under H. R. 1203 the exclusion of certain functions by section 2 (a), such as those which by law expire before July 1, 1947, and certain others, would have the curious effect of leaving these emergency powers that were involved in these three cases still within the scope of operation of H. R. 1203 as respects railroads; but, as to motor carriers and freight forwarders, to which the provisions of the emergency section mentioned were extended by the Second War Powers Act of 1942 temporarily—those functions would be excluded from the operation of H. R. 1203. Certain service orders of the Commission would then be governed by H. R. 1203; certain others as to a different type of carrier would not be governed by H. R. 1203.

In my testimony yesterday I spoke of the many cases in which the Commission is required to issue a rule to hold a hearing. That is required by the practicality of the situation. The question was raised why in such cases the party affected should not be permitted to take

his testimony into the court at once. Now, under section 17, paragraph (6) of the act, he has a very broad right to come to the Commission, to make application for rehearing, reargument, or reconsideration of the same or any matter determined therein. And it seems to me this is the proper course; because, if there were facts which the interested party desired to have considered which were not available to the Commission within the limited time during which it had to act, the right to ask the Commission to consider them being saved to the party by section 17-6, it is only fair he should come to the Commission and ask that the rule be modified not only for his benefit, but for the benefit of all others who may be concerned, and that the administrative discretion be brought to bear upon a true, accurate, and full knowledge of the facts. If he has relevant facts which make a continuance of the rule unreasonable, the general policy of law has been he should exhaust his administrative remedies before going into court.

Of course, we are talking here about extreme cases—these emergency cases. The court, in such a case, finding an administrative question present, would be likely to stay its own proceeding until the complaining party at least had offered to show the Commission by its rule, which we are postulating the law permitted them to make without a formal record, should be considered and heard.

Mr. JENNINGS. Suppose you just give us an instance where such a rule as you are now discussing must be made on the theory it is to meet an emergency—just one illustration. I want the facts.

Mr. AITCHISON. There have been hundreds of them made. They are being made almost daily during the present war—the routing of freight around particular terminals. The very first order that ever was entered by the Commission under that emergency provision happened to be one which I drew and it authorized the carriers to disregard the routing instructions which the law permits the shipper to give and which the law makes binding upon the carrier—to disregard those instructions in cases where the prompt and direct movement of freight would otherwise be hampered.

Mr. JENNINGS. You would have congestion on the line of the certain road in question and you could order the routing changed?

Mr. AITCHISON. Yes. And the second order under that was one which required the movement of 65,000 empty freight cars, as I recall, in one direction, and up into the tens of thousands of another type of car in the reverse movement.

The Koenig cases involved priority in the use of coal car equipment. The only way at that time whereby the social end of seeing that hospitals and Government buildings and common carriers and utilities were kept going could be carried out was by the use of the Commission's car service provisions. And Koenig and the Michigan Portland Cement Co. put in a priority claim, I believe, that they wanted priority coal for a hospital, and the Michigan Portland Cement Co. used it for making cement.

That is the type of order I have in mind.

Now, since yesterday, I have reread sections 7 and 8 of H. R. 1203, to which I am principally addressing myself, in the light of section 17 of the Interstate Commerce Act as it stands at the present time. I have also read section 10 on page 16, paragraph c, lines 15 to 19. And

I am convinced that those two sections mentioned are designed to cover completely, with one possible exception, the provisions of section 17 of the Interstate Commerce Act as it relates to the delegation of its work.

You have before you the sections I have referred to and doubtless are more familiar with them than I am. Section 17 is wholly too long for me to read it to you. If you are interested in following it directly, may I throw out a valuable suggestion, that if there is anything you want to find in the Commerce Act, it is title 49 of the United States Code; so this is the United States Code 49, section 17.

The first paragraph permits the Commission to divide into divisions. That is a feature which is not within the present act except perhaps by reading it in. The word "divisions" I do not believe is mentioned in H. R. 1203. The second paragraph authorizes us to assign particular work of functions to particular divisions, or to members of the Commission individually, or to a board to be composed of three or more eligible employees of the Commission to be designated by such order, for action thereon, and of course gives the Commission power to supplement and modify those assignments at any time. I call attention to this: By the present law, "the following classes of employees are eligible for designation by the Commission to serve on such a board: Examiners, directors, or assistant directors of bureaus, chiefs of sections, and attorneys."

Now, H. R. 1203, if it authorizes us to create a board at all, says that that board shall be composed of individual members of the Commission and examiners, and it eliminates the authority which we have to set up a board which shall consist in part or wholly of directors or assistant directors of bureaus, chiefs of sections, and attorneys.

When we come to a matter like the revision of our tariff rules, we have a most highly complicated matter. Of course, particularly if H. R. 1203 became a law, the Commission would be presumed collectively to have full and final knowledge of the technique required for a revision of those rules—and we will have to revise them pretty soon. But there is nobody better qualified to do that job in the first place and to write the recommended decision than the director of the bureau and his assistants, who are laboring with the code of tariff rules and have been laboring with it all these years.

Mr. JENNINGS. Do I understand you are discussing subsection (c) on page 7 of H. R. 1203—separation of functions?

Mr. AITCHISON. No; I am not. I am referring now particularly to sections 7 and 8 which relate to hearings, and which provide who can hear proceedings. There is not any provision there that we can set up a board for one of those technical questions such as that, or for the revision of the safety appliance rules, or for consultation to help us when we make regulations for the safe transportation of explosives.

For one, I disclaim any such omniscience as to entitle me to sit in judgment without the advice and aid of the experts we have gathered around us. In the case I mentioned of the tariff rules—

Mr. JENNINGS. Just what particular language is it you think would hamper you in the discharge of your duty, or hamper the Commission in the discharge of its duty; what particular language is it you think would do that?

Mr. AITCHISON. Section 7, paragraph a, page 10, "in a hearing pursuant to sections 4 or 5"—section 4 relating to "rules" and section 5 to "adjudications":

SEC. 7. In a hearing pursuant to section 4 or 5—

(a) Presiding officers.—There shall preside at the taking of evidence (1) the agency or (2) one or more subordinate hearing officers designated from members of the body which comprises the agency, * * *

That is the Commission, I take it.

Mr. JENNINGS. Does not that clearly mean that either the whole Commission would hear the matter, or else some designated representative of the agency?

Mr. BRYSON. Or one member of the Commission.

Mr. JENNINGS. Yes; one member of the Commission.

Mr. AITCHISON. Why, certainly it does. The point I make is that under the present law we can make a board, which consists of Director Hardie and his two Assistant Directors, to take up the matter of tariff revision and give us a code of rules which we can put out as a proposed report and let everybody shoot at. That is forbidden.

Mr. JENNINGS. It seems to me there is nothing here that would hamper you in the discharge of your duty.

Mr. AITCHISON. If you will permit me to complete the sentence—you have not the whole sentence in mind yet—

There shall preside at the taking of evidence (1) the agency or (2) one or more subordinate hearing officers designated from members of the body which comprises the agency, State representatives as authorized by statute, or examiners appointed as provided in this act.

In order to make this parallel with section 17, you have to put in there at that point "directors, assistant directors, chiefs of sections, or attorneys" and those words are out. It may be this is better; I am not arguing that at the moment; but I do want to point to the conflict, because it was intimated to me yesterday that I could not tell a conflict when I saw one.

Mr. GWYNNE. That only has to do with who shall preside; this does not prohibit people sitting in with and advising you.

Mr. AITCHISON. It would prohibit the examiner who sat at that hearing taking testimony from consulting with those gentlemen, in the other portion of the act.

Mr. WALTER. He would have a perfect right to consult with them.

Mr. AITCHISON. I am glad to hear you say that, because we have not been able to so read the rule. And, Mr. Walter, we are going to take this (and I think everybody will) in good faith and try to make it work; but we have to feel when Congress uses language which says "he shall not consult" with respect to any matter with anybody else except in a formal way, that Congress means that.

Mr. WALTER. That is exactly what Congress means and we also mean to make it impossible for star chamber proceedings to be held and rights to be determined without the parties interested having an opportunity to participate in the discussion.

Mr. AITCHISON. I am not talking about a star chamber proceeding, Mr. Walter.

Mr. WALTER. Oh, you are.

Mr. AITCHISON. I am talking about a case where we set up a board under the statute, and what that board should do is provided by the

statute. If there was a public hearing involved, it would be required, just as this bill requires, to put out a proposed report and let that be served and let the parties except to it. But why should we be deprived of the opportunity to use our experts in that manner?

Mr. JENNINGS. Now, does it deprive you of that right and opportunity? Suppose you send an expert out and he makes an investigation and is in possession of the facts: Do you make insistence that under this act the Commission could not put him on the stand, or use the result of his investigation?

Mr. AITCHISON. Not at all.

Mr. JENNINGS. To enable them to arrive at a correct conclusion?

Mr. AITCHISON. Not at all. We have put many of them on and it is our policy, whenever our people have facts of that sort, to do so. But I am talking about a case where we are setting up a board which is to take the testimony, and I am simply addressing myself to the sole question as to whether H. R. 1203 is so necessarily inconsistent with the present section 17-1 as to repeal it by implication—necessary implication.

Mr. SPRINGER. Under that section 7 to which you just referred a little while ago, that section provides that "there shall preside at the taking of evidence," that is, the ascertaining of the facts, "the agency or one or more subordinate hearing officers." It does not attempt to set up who shall hear or take the evidence; that section just provides as to the presiding officer.

Mr. AITCHISON. Well, I do not know how the whole agency is to preside. When the whole agency is there, I suppose the chairman presides.

Mr. SPRINGER. It does not say the entire agency.

Mr. AITCHISON. No; but it says "there shall preside at the taking of the evidence (1) the agency."

Mr. SPRINGER. The agency or one or more subordinate officers designated by the members of the body. You can designate one.

Mr. AITCHISON. Naming who they are.

Mr. SPRINGER. That is right.

Mr. AITCHISON. We can set up a board consisting of Director Hardie if we wanted to?

Mr. SPRINGER. That is right. And do not you do that at your hearings—designate one to preside at the taking of testimony?

Mr. AITCHISON. Yes; but H. R. 1203 would forbid our designating Director Hardie, because he is not an examiner; he is not a member of the Commission; he is not a State commissioner.

The CHAIRMAN. Mr. Aitchison, what additional or amendatory language would you suggest to the provisions of the bill in question, or whichever one you want to consider, which would give you the opportunity to use your personnel and your whole facilities to the best advantage, and yet help to avoid some of the practices which the committee evidently has in mind it would like to have avoided?

Mr. AITCHISON. That is a very broad question, but I shall confine my answer, if I may, to the specific points we are discussing, which would, of course, involve a reconciliation of the language of section 7, paragraph a, with the language of section 17, paragraph 2. But there are other things besides that.

The whole theory of sections 7 and 8 of the bill is that the special procedure which is provided there shall result in a proposed report, or recommended report, being made by the officers who heard it even if there were a full division, I suppose, of the Commission—three of the Commissioners—before the entire Commission acts. I think that is a fair summary of the final provisions of sections 7 and 8 of the act.

Now, that is not our present practice, and it is not required by section 17 at the present time. Section 17 does require proposed reports in certain types of cases; it does not require any proposed report when a division of the Commission, consisting of three—of whom two are a quorum—hears a matter, or when the entire Commission hears the case. So, to that extent, again sections 7 and 8 go beyond the provisions of section 17 of the act at the present time.

Mr. JENNINGS. Just reading from section 8, it seems to me that that plainly confounds you in the statement you have just now made, because subsection (a) of section 8 provides that where some subordinate officer of the Commission takes the testimony, that person may make the initial decision.

Mr. AITCHISON. Right.

Mr. JENNINGS. And if the board of Commission do not undertake to review it and lets that initial finding by this subordinate official stand for a certain period of time, then it is just like the report of a master in chancery which is unexcepted to within the time allowed by law; it automatically becomes final. And if the interested party is not satisfied with it, then there may be a hearing, upon proper exception, by the whole board.

It seems to me you are sticking to the bark in some of your criticisms of this language.

Mr. AITCHISON. Perhaps I am, but it is my duty——

Mr. JENNINGS. I am glad to hear your views about it. Go ahead.

Mr. AITCHISON. May I point out this: You, I think, have correctly stated the tenor of section 8, but subordinate officers are defined, and subordinate officers by section 7, paragraph (a), line 9 on page 10 would include the Chairman of the Commission and the two senior Commissioners, or three juniors, or anybody else. It would include a division of the Commission——

Mr. WALTER. Oh, no.

Mr. AITCHISON. "Subordinate hearing officers designated from members of the body." Now, if that is sticking to the bark, I have just got to stick to the bark. And I do not like to be called subordinate when I happen to have been Chairman of the Commission and preside with certain of my colleagues at the taking of testimony.

Mr. JENNINGS. If you are a member of the Interstate Commerce Commission——

Mr. AITCHISON. Why, I have been for 28 years.

Mr. JENNINGS. I beg your pardon; I just had in mind you were counsel for the Commission here.

Mr. AITCHISON. No; I am a member of the Commission.

Mr. JENNINGS. All right; I apologize for not having you properly in mind. I was not here yesterday.

Mr. AITCHISON. I am probably the one who ought to apologize.

Now I want to ask the Congressman if he will be kind enough to turn to section 10 on page 16, paragraph (c), line 15 to 19:

* * * Any agency action shall be final for the purposes of this section notwithstanding that no petition for review, rehearing, reconsideration, reopening, or declaratory order has been presented to or determined by the agency.

I want to contrast that, if I may, with section 17 of the act, paragraph 9. And, mind you, this amendment is one which Congress enacted September 18, 1940; it is nothing very old. Section 17 says:

When an application for rehearing, reargument, or reconsideration of any decision, order, or requirement of a division, an individual commissioner, or a board with respect to any matter assigned or referred to him or it shall have been made and shall have been denied, or after rehearing, reargument, or reconsideration otherwise disposed of by the Commission or an appellate division, a suit to enforce, enjoin, suspend, or set aside such a decision, order, or requirement, in whole or in part, may be brought in a court of the United States under those provisions of law applicable in the case of suits to enforce, enjoin, suspend, or set aside orders of the Commission, but not otherwise.

Now, if I am sticking to the bark in this as being contradictory, I cannot be helpful to this committee——

Mr. GWYNNE. Is it your position that nothing in this law shall in any way affect the conduct of your agency?

Mr. AITCHISON. Not at all.

Mr. GWYNNE. I think we have a right to change the law, do we not?

Mr. AITCHISON. Certainly.

Mr. GWYNNE. That is what we are doing.

Mr. AITCHISON. I am not at all sure but what you are suggesting here is better. But it was suggested here yesterday and urged with considerable emphasis from the bench, that after all you are just taking our practice and our law, and if there is nothing inconsistent with it, why, well and good.

Mr. GWYNNE. If this bill does not change the existence procedure of these bureaus, I think it had better be thrown in the wastebasket. That is the purpose of it, as I understood.

Mr. AITCHISON. I am not saying our procedure is the last word, but I hope with the flexible powers which Congress has given us we can still do some experimentation and pioneering in the matter of correct procedure.

Mr. GWYNNE. Do not you think we might as well stick to some of the old formulas and say that the prosecutor and judge cannot be the same person? You do not care to experiment with that, do you?

Mr. AITCHISON. No; I do not.

Mr. JENNINGS. Frankly, I have not had your Commission, or the Commission of which you are a member, so much in mind in my consideration of this proposed measure; but I think we have some other governmental agencies that have offended egregiously in this matter. I have not had in mind and have never heard any criticism, as I recall, of the Interstate Commerce Commission being arbitrary or lawless, and disposed to trample on people's rights; but there are some agencies under the present set-up that have been on the rampage.

Mr. AITCHISON. I thank Your Honor for that observation. It is a little consolation, considering that only last week we were reversed by the Supreme Court because certain testimony had been excluded

from the record by one of the State boards, and we had sustained its ruling.

Now, my opinion is—and I think, having been called to the bar nearly 50 years ago that I can state it for whatever it is worth, and it seems good to me if it does not to anybody else—that the provisions of sections 7 and 8 of this bill and section 17 of the Interstate Commerce Act cannot possibly stand together. It may be, as Congressman Gwynne suggests, that section 8 is better; but certainly there is going to be confusion; it is going to require court decisions. We do not know, except by implication, what of section 17 is repealed, and I direct the attention of this committee to the fact that in this bill it is provided that future legislation in future Congresses shall not be construed to affect this legislation unless it expressly says so. I ask the same privilege with respect to the Interstate Commerce Act. If it is to be amended, if it is wrong, set your legislative reference people to work, your legislative counsel, and let us talk the thing over with them and let us come to a proper repealing clause, and know exactly what the law is we are required to enforce, and not to have to take it to the Supreme Court.

Mr. JENNINGS. Of course, you are fully familiar with the principle that repeals by implication are not favored.

Mr. AITCHISON. I understand. And I am also thoroughly familiar with the principle that where a subject matter is treated as a whole by a legislative body subsequent to earlier, more specific legislation, and the two cannot stand together, that the later expression of the legislative will controls.

Now, I hate to throw any aspersions or “asparagus” at the draftsmanship of this bill. It comes from eminent authority, and I know I am myself subject to criticism as being meticulous——

The CHAIRMAN. That is all right; just go after them.

Mr. AITCHISON. All right: with the chairman’s permission, I will do so. And I am going to start with the first paragraph of the act, other than the one which says that this act may be cited as the “Administrative Procedure Act.” Section 2 defines “agency” and says:

“Agency” means each authority of the Government of the United States other than Congress, the courts, or the governments of the possessions, Territories, or the District of Columbia.

Then follows certain functions which are excepted, which I think I need not go into. I have already, probably tediously, summarized the provisions of section 17 of the act. I should have called attention also to the Motor Carrier Act which provides for State boards being given jurisdiction in a “noble experiment” of the decentralization of Federal power, which is working and has worked out very well. But now I want to ask when the Congress says that a division of the Commission shall have all of the powers, duties, and responsibilities of the Commission when it acts, is it an “authority”? And, for that matter, when an individual Commissioner acts under a delegation of power under section 17, he acts under authority of the Congress and he is given the same authority as the Commission, and the word “authority” is used in the bill, is he an agency or not?

Mr. WALTER. Well, you are certainly splitting hairs pretty thin when you raise that question.

Mr. AITCHISON. Well, what is the answer; what is an agency supposed to be?

Mr. WALTER. The answer is "Yes"; no question about it.

Mr. JENNINGS. Just like a court meets in banc and hears argument and the case is assigned to one member of the court and he goes off and later brings in an opinion: The other members have not read that record, but they concur in his opinion and it becomes the opinion of the court. Your procedure is analogous to that.

Mr. AITCHISON. All right. If "agency" means the entire Interstate Commerce Commission, then I submit, as you go through this act and read it, you will find where "agency" as used throughout the act has a different meaning.

Mr. JENNINGS. Is it your position that the Congress ought not to pass an over-all statute?

Mr. AITCHISON. Not at all.

Mr. JENNINGS. Undertaking to hold these various numerous governmental agencies within the limitations of the law of the land?

Mr. AITCHISON. Not at all, Congressman. I am not talking about anybody except the Commission of which I am a member.

Mr. WALTER. May I direct your attention to the definition of "agency" made by the Attorney General's Committee on page 4 of H. R. 1206, paragraph (a):

"Agency" means each office, board, commission, independent establishment, authority, corporation, department, bureau, division, or other subdivision or unit of the executive branch of the Federal Government, and means the highest or ultimate authority therein.

Mr. AITCHISON. That certainly is more precise than section 2 as we have it in H. R. 1203.

Now, I want to ask this and split hairs again: I find the courts are excluded from section 2. Is the President? He makes rules; he makes adjudications of the type which are referred to in this act. Now, that is none of my business; I am just a citizen and just throw that question in for whatever it is worth. I do not know what the intent is, of course.

Mr. JENNINGS. Well, if it operates to forbid the President from operating as a legislative agency, I would say it is good law.

Mr. AITCHISON. I cannot debate that, because that is out entirely of my sphere. But I want to mention one more obscurity which I would be glad to have the committee help straighten out, for I may have a complete misunderstanding of what this act is.

Take the definition of "rules" and "rule making." That is page 2, paragraph 2 (c). It seems to me obvious that the word "rule" would not include the rate as made, unless it is brought in afterward.

The CHAIRMAN. What addition would you make in the language to which you refer in order to make it clear?

Mr. AITCHISON. Well, they have tried to do that in the Senate revision by inserting this language—

Mr. WALTER. Where does that appear?

Mr. AITCHISON. It is at the top of page 3 of the Senate revision, where they say "'rule making' means agency process for the formulation, amendment, or repeal of a rule." That is what is in the House bill, and then they add in the Senate bill "and includes rate making, or wage or price fixing."

Mr. WALTER. That is at the top of page 3, column 2.

Mr. BRYSON. That is S. 7, is it not?

Mr. AITCHISON. S. 7. Now I shall mention just some practical difficulties about that for your consideration, for whatever they may be worth—little or nothing, possibly.

Mr. WALTER. If that language "rate making," then, were included, you would have nothing to object to?

Mr. AITCHISON. I think I will ask that the language be further clarified in respect to some matters I will bring to Your Honor's attention in just a moment, because it seems to me obvious that rate making is anomalously included under the term "rule making" when the rate is not a rule. It is just a matter of English. But passing all that, now, we make rates for the future; we make rates for the past; we fix rates as reasonable in the past. We are performing there the function of a common-law jury.

Of course, our orders are only prima facie evidence and the matter has to go before a jury if there is more than \$20 in dispute. I refer, of course, to reparation cases. But it is clear and it is well worked out by Justice Roberts in the Arizona Grocery case—*Arizona Grocery Company v. Atchison, Topeka & Santa Fe*—that the Commission acts in the one case, when it reviews these past rates, in a quasi judicial capacity and, for the future, it is performing a legislation act.

Now, I have no objection to your calling that a rule, Congressman Walter. Pardon me for addressing you personally, but you raised the question yesterday with respect to whether or not, after all, we did not have controversies between A and B concerning a rate and whether C could not later come along with another case.

Assume we find in the case of A versus B Railway Company that the rate is unreasonable; as was held by the Supreme Court of the United States in *A. J. Phillips & Co. v. Grand Trunk Western Railway*, anybody can take advantage of that finding, whether a party to the proceeding or not, and there we are acting with respect to a past rate. I would like to ask if you cannot clarify that for us.

The word "order" as we find it a little later seems to go back to the original idea of the Attorney General's Committee and the American Bar Association, that "rule" is a legislative matter of general applicability, while "adjudication" refers to particular matters. Yet when the revised section 2 (c) puts rate making in with rule making, even such matters as our shortened procedure cases which are tried virtually on affidavits where there is no hearing at all; the hearing is dispensed with—all those things, that sort of procedure against one carrier with respect to one commodity from one point to another point—all of those things become rule making and are governed by principles which apply when we are laying down a legislative rule for the future.

It does not seem to me that is good administration. The term lacks precision to those of us who are going to be compelled to administer this law. Does it mean only rates for the future, these cases I have mentioned, as was held in *Baer Bros. v. Denver & Rio Grande Railway* (233 U. S. 479)—that rates for the future and for the past may legally be brought together before the Commission and disposed of upon the same petition? That rule is settled. But when we do that with respect to the past and substitute ourselves for a common law jury, is it an adjudication, or rule making; or is it rate making? I do not know and I would like to have it clarified.

Mr. SPRINGER. How would you suggest that that be clarified so as not to cause you any confusion?

Mr. AITCHISON. I think the original intent was better, to let the "rules" speak with respect to those matters of general applicability which necessarily have to be expressed in more or less general terms as a substitute for the specific will of Congress. I do not think it will work out in the long run to attempt to assimilate the proceedings of the kind I have just mentioned, but it is the same process as the one of prescribing the form of carriers' accounts to be kept uniformly, as the statute provides. There are many questions which are more or less directly connected with rates, but not with the price itself. This is not restricted to "price."

Take the terms of bills of lading which we prescribe under authority of law "to prescribe a uniform bill of lading"; or the making of a classification of freight, which is a most intricate and voluminous job; and then take a case where we find preference and prejudice and do not fix any rate at all, but simply say the rate from point A to point B should not exceed the rate from point C to point B, and leave it to the carriers—and are compelled to leave it to the carriers according to some counsel—to adjust the one or the other; we do not fix the price at all, do not fix the rate at all; we simply fix the relation. Or take the interpretation of conflicting or obscure tariffs to determine what the rate is or was—and that is one of our most difficult questions; or the division of through rates between the participants.

You might say, maybe, that I got off wrong a minute ago when I said those are primarily matters of adjudication, but I run my head up against the New England Divisions case which went up to the Supreme Court, where Justice Brandeis in a most masterly opinion concerning the division of through rates as between the carriers, held it is not a matter of private concern to them alone; it is one of very grave public concern. In that case it involved the whole question of the solvency of the New England railroads, and the Supreme Court sustained the decision on very broad grounds with merely typical testimony, because of the character of the issue and the public interest which was involved. That is more analogous, I would say, to rule making, yet it laid down a precise formula applicable to an individual rate—every individual rate.

The CHAIRMAN. What sort of formula, if you can tell us briefly, was laid down with reference to the division of rates?

Mr. AITCHISON. They simply gave the New England lines a greater share than they were getting.

The CHAIRMAN. I asked what formula did they lay down.

Mr. AITCHISON. The matter was covered by division sheets between the carriers themselves.

The CHAIRMAN. Maybe a railroad man would know what that means, but it is not clear to me.

Mr. AITCHISON. You might say "contracts"; it was covered by contracts between the railroads. But we said "You have to modify your existing contracts by giving the New England lines 15 percent more than they are getting."

The CHAIRMAN. By what formula did you arrive at that conclusion?

Mr. AITCHISON. That was done by a study, as the law provides, of the revenue needs of the carriers.

The CHAIRMAN. I am trying to get at the formula, though.

Mr. AITCHISON. The standards for the prescription of divisions are paid down in the statute itself and, among them, is the amount of money which is needed by the various carriers involved, and their importance to the public.

Mr. WALTER. Why could not that case have been decided under the provisions of this proposed law?

Mr. AITCHISON. It could; but I do not know whether it could be decided as a "rule" or "adjudication" case.

Mr. WALTER. What difference does it make?

Mr. AITCHISON. It makes considerable difference; because we were told on the opening day that normally "rules" are things that do not require notice, except as required by law.

The CHAIRMAN. Who told you that?

Mr. AITCHISON. Well, I may have misunderstood counsel, but it seems to me that is what counsel said.

Obviously there are some rules which cannot be made except in that way.

Mr. JENNINGS. Certain conclusions are reached in a case, which you affirm, and they are upheld by the Supreme Court. Of course, the Commission has been operating a long time. It has covered a broad field and a multitude of steps. It has adopted certain rules, practices, and methods of procedure that have become part of the law of the land. Do you really think that this measure will strike down all those accomplishments made over the years?

Mr. AITCHISON. Why, of course not.

Mr. JENNINGS. And that you will be wandering around on an uncharted sea and be unable to reach your objective?

Mr. AITCHISON. Oh, of course not. I have completely failed if I have given any such impression. But I am going to suggest to your Honors, if it is not lese majesty—

The CHAIRMAN. No, sir; it is not.

Mr. AITCHISON (continuing). That a bill which has been amended as many times as this has been by the Senate committee after informal discussion with some of the agencies, would probably be better if there were discussion with all the agencies and some further amendment.

The CHAIRMAN. I will tell you what I believe would be helpful, Mr. Aitchison. If you could take this Senate amendment, or one of the others that you have in mind, and could give to the committee the benefit of suggestions as to how that language might be amended in order to give you as much liberty as can be had in the discharge of your responsibilities without hampering you, I believe it would be very helpful to the committee. The committee appreciates that you and your agency want to be helpful—and I know the committee does—in dealing with this general question. I believe that that perhaps would be as helpful a thing as you could possibly do in this situation.

Mr. AITCHISON. That is a large order, and I shall present it to my colleagues to do what we can do toward complying with the chairman's suggestion.

The CHAIRMAN. I believe that that would be a very helpful thing. There is a gentleman from outside the Government, Mr. W. E. Rosenbaum, to whom I believe the committee would like to give an opportunity to speak.

Mr. AITCHISON. I am almost completed here.

The CHAIRMAN. I do not mean to interrupt you.

Mr. AITCHISON. I had intended, but I do not now think it is necessary, in the light of a good deal of the discussion, to spend some time on a discussion of the chairman's question as to who or what machinery shall be assigned to hear matters in dispute.

The CHAIRMAN. That is one of the things we are having discussion about. Let me put it this way: Do you consider that if the agency personnel that sits in judgment in the first instance here, who hear discussed the facts on which the record is made, are appointed by some agency other than yours, it would interfere with the scope of your activities? My question is involved, but I hope I have been able to indicate to you what we have in mind.

Mr. AITCHISON. It is a question of whether, if the examiners, for instance, who hear our cases were appointed by some other agency our work would be impeded?

The CHAIRMAN. That is right.

Mr. AITCHISON. Well, I find it a little difficult to answer that categorically. If we are going to have responsibility for results, and if at the end of our term the President is going to throw us out because he does not like the way we have functioned during our terms, we ought to have a very great deal of latitude with respect to the people that we employ as our confidential assistants, and people we trust. The examiners whom we sent out are oftentimes the only persons whom the general public see. They are, as far as the general public are concerned, the Commission. On their tact, their skill, their demeanor, and their honesty depends our honor, the success or failure of our work, and the future of our professional careers as members of the Commission. In the light of that, I submit that we ought to have the utmost freedom which good administration will permit. Now, we are tickled to death—and I think the Congressmen are—to have to go to the Civil Service Commission for these examiners. It takes a tremendous burden of pulling and hauling pressure off you—

The CHAIRMAN. I think we have the picture you have in mind. You do not need to go further into that. How many examiners do you have there?

Mr. AITCHISON. I cannot answer that directly.

The CHAIRMAN. Approximately?

Mr. AITCHISON. You will be surprised to know—I happen to know this—that at the present moment in the highest grade we have there are only two men who are presently available to hear cases. I know that because I have one of those highest grade cases assigned to me, and I cannot get an examiner to help me.

The CHAIRMAN. Do you know how the others are engaged?

Mr. AITCHISON. The others are assigned to other work. I think there are only four under the total grade—unable to function with respect to the hearing of cases. It is a situation we have to correct. We shall have to have more men. But that is not the entire story.

Mr. SPRINGER. Could you not approximate the number of employees and examiners you have in your agency?

Mr. AITCHISON. Of all the employees, there are more than 2,000.

Mr. SPRINGER. Yes; now, could you approximate for us the number of examiners you have, so that we will have some idea?

Mr. AITCHISON. Including motor carriers, finance, those on the formal cases, and those who are assigned to the handling of these shortened procedure cases, approximately 200 of all grades.

The CHAIRMAN. What my colleague is trying to get at is how many really exercise, may I call it, quasi judicial responsibility.

Mr. AITCHISON. Well, they all do within the ambits of their delegation and responsibility.

The CHAIRMAN. Some of them you merely send out to get some isolated facts, do you not?

Mr. AITCHISON. That is a different proposition.

The CHAIRMAN. They are not classed as examiners?

Mr. AITCHISON. No.

The CHAIRMAN. All right. We have that.

Mr. AITCHISON. We have always been very careful to keep our organization operating in such a way that it is completely public. I pass up to the bench—perhaps the members of the committee might care to glance at it—a copy of the organization make-up of the Commission.

I might call your attention to the matter of judicial review. I have here a page and a quarter that I have read over the telephone to Judge Phillips, who is chairman of the committee of the judicial conference considering the matter of review. That conference is still wrestling with the question of review of orders of these administrative agencies which are heard before three-judge courts and are appealable to the Supreme Court as of right. I merely make that suggestion.

I must mention the matter of judicial review—obviously one of great importance. As is well known to the members of this committee, and as appears in the proceedings of the judicial conference, for nearly 3 years a committee appointed by the Chief Justice has been considering the matter of judicial review of orders of administrative agencies which by law are heard before three judges and are appealable as of right to the Supreme Court. A bill has been drafted and circulated widely by the committee, of which the Honorable Orie L. Phillips is chairman, and comments of the bench and bar have been invited thereon. That draft relates particularly to review of orders of the Interstate Commerce Commission, but, as appears by the minutes of the judicial conference, that body has in mind the possibility of making it a model bill for other agencies. While I am a member of that committee by the courteous invitation of the Chief Justice, I am not speaking for the committee. But I deem it my duty to direct your attention to the work which the judicial conference is doing upon this subject of judicial review and suggest that you give my suggestion whatever consideration is appropriate.

STATEMENT OF WILLIAM E. ROSENBAUM, ST. LOUIS, MO.

The CHAIRMAN. Mr. Rosenbaum, I dislike putting it this way, but we can give you just about 10 minutes.

Mr. ROSENBAUM. That is all I asked for, Mr. Chairman.

The CHAIRMAN. All right. You may proceed.

Mr. ROSENBAUM. Mr. Chairman and gentlemen, my name is William Edward Rosenbaum. My address is 952 Cotton Belt Building, St. Louis, Mo. I happen to be what is generally known as a traffic or

transportation consultant. I am not a lawyer, but I have been practicing before the Interstate Commerce Commission, as many others who are not lawyers have been.

Mr. WALTER. Maybe we can save a little of your time by calling your attention to the language in the bill as originally introduced and also in the revised text of the Senate bill, in which it is provided that any person compelled to appear in person before any agency or representative thereof shall be accorded the right to be accompanied and advised by counsel, or, if permitted by the agency, by other qualified representatives. So you have no reason to fear anything in this legislation.

Mr. ROSENBAUM. That is, provided the House adopts the same revised text.

Mr. WALTER. The same provision is in the other bill. Every interested person shall be accorded the right to appear in person or by counsel or other qualified representative.

Mr. ROSENBAUM. But I should like to call your attention to this, Congressman: In H. R. 1203, while I see what you just quoted in lines 5 and 6, in section 6, page 8, you have failed to make that provision in line 11. You say there, beginning on line 9:

Every person appearing or summoned in any agency proceeding shall be freely accorded the right to be accompanied and advised by counsel.

We would like to have added thereto what you just read in line 5.

The CHAIRMAN. I think you may depend on that being taken care of. I understand that Mr. McFarland, in his statement the other day, said there was no disposition to disturb the existing arrangement.

Mr. ROSENBAUM. I understand that, but I should like to call your attention to what I think is an oversight in having failed to include in line 11 "or other qualified representative." All we want is that addition.

I am speaking not only for myself here, Mr. Chairman, but I am speaking also for 50 other nonlawyer practitioners. I shall leave here a list of those who have authorized me to appear for them. You will notice we have covered chambers of commerce, transportation agencies, and agricultural interests throughout the country.

The CHAIRMAN. That will be incorporated with your statement; and you may file a more complete statement in lieu of your remarks.

Mr. ROSENBAUM. I should like to have permission to extend my remarks. I have here also a telegram from the Southern Industrial Traffic League, signed by O. H. Weaver, president, which I should like to read. It is dated Griffin, Ga., June 20, 1945, and reads as follows:

Understand you will appear before House Judiciary Committee in opposition to bill H. R. 1203. As the rights of nonlawyer practitioners are in jeopardy, the league is on record opposed to this bill. Will appreciate you also speaking for us.

Now, I understand that the members of the Southern Industrial Traffic League control at least 95 percent of the shipping of the Southern States.

I have also a similar statement from the North Carolina Traffic League.

Mr. GWYNNE. You are satisfied with the wording of the Senate committee print?

Mr. ROSENBAUM. Yes; I am.

Mr. GWYNNE. That is satisfactory?

Mr. ROSENBAUM. Yes; it is.

The CHAIRMAN. I am afraid we are going to have to go to the floor of the House. I have not consulted with my colleagues, but we shall have to recess now subject to call at a future date.

We are very much obliged to all of you. We are sorry that the committee is unable to remain longer today, but there is much work that we must all attend to now. We cannot say when we will conclude or continue the hearings, but you will be notified.

(The list of parties for whom Mr. W. E. Rosenbaum speaks is as follows:)

STATEMENT SHOWING LIST OF PARTIES FOR WHOM MR. W. E. ROSENBAUM SPEAKS
Charles E. Blaine, American National Live Stock Association, Phoenix, Ariz.

C. C. Dehne, Arkansas Rice Traffic Association, Stuttgart, Ark.
W. A. Rohde, Chamber of Commerce, San Francisco, Calif.
E. L. Hart, Atlanta Freight Bureau, Atlanta, Ga.
E. T. Hayes, Container Corporation of America, Chicago, Ill.
C. F. Real, Topeka Traffic Association, Topeka, Kans.
W. E. Whelpley, Chamber of Commerce, Boston, Mass.
H. D. Fenske, Great Lakes Steel Corporation, Ecorse, Mich.
Allen Dean, Board of Commerce, Detroit, Mich.
A. W. Dahlstrom, Chamber of Commerce, Muskegon, Mich.
C. E. Elerick, Chamber of Commerce, Grand Rapids, Mich.
C. E. Berg, Association of Commerce, St. Paul, Minn.
H. Mueller, Port Authority, St. Paul, Minn.
Carl Giessow, Chamber of Commerce, St. Louis, Mo.
W. E. Rosenbaum, St. Louis, Mo.
B. C. Kinman, Daniels Freight Lines, Butte, Mont.
L. F. Van Kleeck, Brown Co., Berlin, N. H.
C. F. Fagg, Newark Central Warehouse Co., Newark, N. J.
Eric E. Ebert, Newark, N. J.
C. V. Hanlon, New York, N. Y.
George E. Mace, Commercial and Industrial Association, New York, N. Y.
W. S. Creighton, Southern Traffic League, Charlotte, N. C.
C. E. O'Neal, Roseville, Ohio.
E. H. Dorenbusch, American Rolling Mill Co., Middletown, Ohio.
R. A. Ellison, Chamber of Commerce, Cincinnati, Ohio.
Dana B. Gee, Capital City Products Co., Columbus, Ohio.
William J. Brown, Frank Tea & Spice Co., Cincinnati, Ohio.
L. H. Kamp, H. & S. Progue Co., Cincinnati, Ohio.
B. J. Tillman, Beckett Paper Co., Hamilton, Ohio.
Frank S. Clay, Portland Traffic Association, Portland, Oreg.
L. T. Cuthbert, Am-Franklin-Olean Tile Co., Lansdale, Pa.
G. F. Murphy, Motor Truck Rate Bureau, Columbia, S. C.
C. E. Logwood, Public Service Commission, Columbia, S. C.
S. W. W. Carr, Chamber of Commerce, Watertown, S. Dak.
G. A. Ryser, Texas & Pacific Railway, Dallas, Tex.
C. H. Campbell, Strickland Transportation Co., Dallas, Tex.
H. N. Roberts, Dallas, Tex.
James G. Goodwin, Perry Burrus Elevators, Dallas, Tex.
E. P. Byars, Chamber of Commerce, Fort Worth, Tex.
J. A. Meyers, Fort Worth, Tex.
R. T. Wilbanks, Montgomery Ward Co., Fort Worth, Tex.
J. W. McCullough, Houston, Tex.
L. D. Smith, Consolidated Chemical Industries, Houston, Tex.
E. C. Nicar, Houston Freight Traffic Service, Houston, Tex.
J. D. Campbell, Utah Oil Refining Co., Salt Lake City, Utah.
E. C. Jepson, Wheeling Steel Corp., Wheeling, W. Va.
Charles B. Bowling, Warren H. Powell, George D. Schuler, Jr., Howard D. Bergen, Transportation Rates and Services Division, Office of Marketing Facilities, War Food Administration, Washington, D. C.

(At 11:15 a. m. the committee adjourned subject to the call of the chairman.)

(NOTE.—It was later determined that no further hearings would be held.)

APPENDIX

[H. R. 184, 79th Cong., 1st sess.]

A BILL To revise the administrative procedure of Federal agencies; to establish the Office of Federal Administrative Procedure; to provide for hearing commissioners; to authorize declaratory ruling by administrative agencies; and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, divided into titles and sections according to the following table of contents, may be cited as the "Administrative Procedure Act of 1941":

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TITLE I—GENERAL PROVISIONS AND OFFICE OF FEDERAL ADMINISTRATIVE PROCEDURE

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- Sec. 102. Definitions.
- Sec. 103. Delegation of authority.
- Sec. 104. Right to counsel.
- Sec. 105. Office of Federal Administrative Procedure.
- Sec. 106. Advisory committees.
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TITLE II—ADMINISTRATIVE RULE MAKING

- Sec. 201. Rules and other information required to be published.
 - (1) Internal organization and structure.
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- Sec. 202. Formulation of rules.
- Sec. 203. Effective date of rules.
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TITLE III—ADMINISTRATIVE ADJUDICATION

- Sec. 301. Application of title.
- Sec. 302. Appointment and removal of hearing commissioners.
 - (1) Hearing commissioners.
 - (2) Salaries.
 - (3) Selection and appointment.
 - (4) Basis of nominations.
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 - (9) Powers of provisional and temporary hearing commissioners.
- Sec. 303. Hearings of cases.
 - (1) Hearing before hearing commissioner.
 - (2) When no hearing required.
 - (3) Defaults.
- Sec. 304. Powers and duties of hearing commissioner.
 - (1) Powers at hearing.
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 - (3) Prehearing conferences.
 - (4) Hearing commissioner's decision.
- Sec. 305. Powers and duties of chief hearing commissioner.
 - (1) Power to hear cases.
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 - (3) Agencies where no chief hearing commissioner.
- Sec. 306. Disqualification of a hearing commissioner.
- Sec. 307. Cases when no decision by hearing commissioner required.
 - (1) Certification of existence of novel or complex questions.
 - (2) Transfer of case on petition.
 - (3) Opportunity to present argument.
- Sec. 308. Effect of decision of hearing commissioner.
 - (1) Finality when no appeal taken or review ordered.
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 - (1) Assignment of errors on appeal.
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- Sec. 310. Record on appeal to courts.
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- Sec. 312. Time of taking effect.
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TITLE IV—DECLARATORY RULINGS

Sec. 401. Power to issue rulings.
Sec. 402. Effect.
Sec. 403. Parties.
Sec. 404. Judicial review.

TITLE I—GENERAL PROVISIONS AND OFFICE OF FEDERAL ADMINISTRATIVE PROCEDURE

SEC. 101. DECLARATION OF GENERAL POLICY.—The exercise of all administrative powers, insofar as they affect private rights, privileges, or immunities, should be effected by established procedures designed to assure the adequate protection of private interests and to effectuate the declared policies of Congress. While procedures should be adapted to the necessities and differences of legislation and of the subject matter involved, they should in any event be made known to all interested persons. Administrative adjudication should be attended by procedures which assure due notice, adequate opportunity to present and meet evidence and argument, and prompt decision.

SEC. 102. DEFINITIONS.—As used in this Act—

(a) "Agency" means any department, board, commission, authority, corporation, administration, independent establishment, or other subdivision of the executive branch of the Government of the United States which is empowered by law to determine the rights, duties, immunities, or privileges of persons, other than persons in their capacity as employees of the United States, by the making of rules and regulations or by adjudications which are unreviewable except by the courts. Where the context warrants, "agency" means more particularly the officer or group of officers within an agency as above defined who are not subordinate or responsible to any other officer therein.

(b) "Agency tribunal" means the officer or group of officers within an agency whose decisions in adjudication are unreviewable except by the courts.

SEC. 103. DELEGATION OF AUTHORITY.—(a) Subject to such supervision, direction, review, or reconsideration as it may prescribe, every agency or agency tribunal is authorized to delegate to its responsible members, officers, employees, committees, or administrative boards power to manage its internal affairs; to dispose informally of requests, complaints, applications, and cases; to issue complaints, show-cause orders, or other moving papers; and to govern matters of preliminary, initial, intermediate, or ancillary procedure.

(b) Every agency tribunal having more than a single member may delegate to one or more of its members, subject to review or reconsideration by it, the power to decide cases after hearing or on appeal.

(c) Where the ultimate authority in any agency is vested in a single individual, he may delegate any of his powers of final adjudication to one or more agency tribunals with such membership as he may prescribe.

SEC. 104. RIGHT TO COUNSEL.—Every person appearing or summoned in any administrative proceeding shall be allowed the assistance of counsel.

SEC. 105. OFFICE OF FEDERAL ADMINISTRATIVE PROCEDURE.—(1) There shall be appointed by the President, by and with the advice of the Senate, an officer to be known as the Director of Federal Administrative Procedure (hereafter referred to as the Director), who shall hold office for the term of seven years or until a successor has been appointed, and shall receive an annual salary of \$10,000.

(2) There shall be at the seat of government an establishment to be known as the Office of Federal Administrative Procedure composed of the Director, a justice of the United States Court of Appeals for the District of Columbia designated by its chief justice, and the Director of the Administrative Office of the United States Courts, who shall serve without extra compensation.

(3) The Director shall have authority to appoint, without regard for the provisions of the civil-service laws, an executive secretary and such attorneys, investigators, and experts as are deemed necessary to perform the functions and duties vested in the Director and Office of Federal Administrative Procedure, and he shall fix their compensation according to the Classification Act of 1923, as amended. The Director shall appoint such other employees with regard to existing laws applicable to the appointment and compensation of officers and employees of the United States, as he may from time to time find necessary.

SEC. 106. ADVISORY COMMITTEES.—(1) The Director shall designate from time to time, as occasion requires, the administrative establishments of the United States which are agencies within the meaning of this Act.

(2) Each agency so designated shall from time to time name one of its members or officers to serve as an adviser to the Office of Federal Administrative Procedure and the Director.

(3) From the representatives of the agencies so named the Director shall constitute such advisory committee or committees as he may deem helpful, and may add to them additional officers of the Government or members of the public.

(4) It shall be the duty of each agency promptly to furnish the Director all information which he may request and to assist him by all possible means. The Director, in the performance of his duties, is authorized to utilize, with the consent of any agency, the personnel or facilities of that agency, and may utilize any other uncompensated personal services or facilities.

SEC. 107. DUTIES OF THE DIRECTOR.—The Director shall—

(1) Conduct such inquiries into the practices and procedures of the agencies as he may deem necessary, with a view to securing the just and efficient discharge of their respective responsibilities;

(2) Make such recommendations and transmit such information to the agencies as may facilitate the uniform adoption, wherever feasible and appropriate, of those practices, procedures, and methods of organization which have proved most satisfactory;

(3) Receive complaints regarding the procedure of particular agencies, investigate those which appear to be made in good faith, and report thereon to the complainants and to the agency concerned, recommending to the agency any measures which seem to the Director desirable to correct deficiencies;

(4) Examine the practices of the several agencies with respect to the giving of publicity to matters pending before them; and recommend rules to simplify and unify to the fullest practicable extent existing provisions which govern utilization of answers and other pleadings; issuance of subpoenas; taking testimony by deposition; content, cost, and availability of transcripts of records; introduction of documentary evidence; standards of proof; requests for findings of fact; exceptions to findings; oral arguments; and rehearings;

(5) Investigate the admission to practice before the several agencies, in order to determine whether it can be centralized and controlled, with a view to eliminating needless delay and duplication in authorizing members of the bar to appear before agencies; regularizing the circumstances in which others than members of the bar may properly so appear; and developing adequate mechanisms for disciplining or disbarring from further practice before the agencies those whose conduct has shown them to be unworthy;

(6) Perform, with other members of the Office, the duties relating to the appointment and removal of hearing commissioners prescribed by this Act;

(7) On or before the 1st day of December in each year, transmit to the President and the Congress a report of the work of the Office during the past year, together with any recommendations relating to the practices and procedures of the agencies which the Director may deem appropriate. The report shall also record the names and qualifications of all hearing commissioners appointed since the last report, and the circumstances regarding any proceedings for the removal of hearing commissioners.

TITLE II—ADMINISTRATIVE RULE-MAKING

SEC. 201. RULES AND OTHER INFORMATION REQUIRED TO BE PUBLISHED.—(1) INTERNAL ORGANIZATION AND STRUCTURE.—Every agency shall promptly make available and currently maintain a statement of its internal organization, insofar as it may affect the public in its dealings with the agency, specifying (a) its officers and types of personnel; (b) its subdivisions; and (c) the places of business or operation, duties, functions, and general authority or jurisdiction of each of the foregoing.

(2) PUBLICATION OF POLICIES, INTERPRETATIONS, AND RULES.—All general policies and interpretations of law, where they have been adopted; rules, regulations, and procedures, whether formal or informal; prescribed forms and instructions with respect to reports or other material required to be filed, shall be made available to the public.

SEC. 202. FORMULATION OF RULES.—Every agency shall designate one or more units, committees, boards, officers, or employes to receive suggestions and expedite the making, amendment, or revision of rules, subject to the control and supervision of the agency.

SEC. 203. EFFECTIVE DATE OF RULES.—No regulation hereafter promulgated by an agency shall take effect until forty-five days after the date of its initial pub-

lication in the Federal Register unless the regulation or the statute by authority of which it is promulgated provides a longer period; but this limitation upon the time when a regulation takes effect may be reduced or eliminated by certification of the agency, published with the regulation in the Federal Register, that stated circumstances require the effective date to be advanced as specified.

SEC. 204. FORMAL REQUESTS FOR REGULATIONS.—Any persons may file with an agency a petition requesting the promulgation or amendment of a rule in which the petitioner has an interest. Such petition shall be submitted in such form and with such content as may be prescribed by each agency.

SEC. 205. REPORTS TO CONGRESS.—Annually, in its report to Congress or otherwise; each agency shall transmit all rules promulgated by it during the preceding twelve months, together with such explanatory material relating to substance or procedure as may be appropriate. The agency shall also include a summary of formal requests with respect to regulations received by it pursuant to section 204 of this title since its last report, and the reasons for its refusal of such of these requests as may have been refused.

SEC. 206. TIME OF TAKING EFFECT.—This title shall take effect thirty days after the date of enactment of this Act.

TITLE III—ADMINISTRATIVE ADJUDICATION

SEC. 301. APPLICATION OF TITLE.—The provisions of sections 302 to 309, inclusive, of this title shall be applicable only to proceedings wherein rights, duties, or other legal relations are required by law to be determined after opportunity for hearing, and, if a hearing be held, only upon the basis of a record made in the course of such hearing. They shall not apply to—

(a) proceedings in which a hearing for the purpose of receiving evidence is held before the agency tribunal, or before one or more individual members of an agency tribunal;

(b) proceedings which, pursuant to a law of the United States, are conducted before an officer of one of the States;

(c) proceedings which precede the issuance of a rule, regulation, or order involving the future governance or control of persons not required by law to be parties to the proceedings;

(d) matters concerning the conduct of the Military or Naval Establishments, or the selection or procurement of men or materials for the armed forces of the United States;

(e) the selection, appointment, promotion, dismissal, discipline, or retirement of an employee or officer of the United States, other than a hearing commissioner as provided hereinafter in this title; or

(f) matters relating to the patent or trade-mark laws.

SEC. 302. APPOINTMENT AND REMOVAL OF HEARING COMMISSIONERS.—(1) **HEARING COMMISSIONERS.**—In each agency entrusted with the duty of deciding cases, there shall be appointed such number of officers to be known as "hearing commissioners" as the agency may from time to time find necessary for the proper hearing of cases. In any agency in which five or more hearing commissioners have been appointed, one of their number shall be designated by the agency as the "chief hearing commissioner."

(2) **SALARIES.**—The salary of a hearing commissioner shall be \$7,500 per annum and of a chief hearing commissioner, \$8,500 per annum, and shall be paid from appropriations for salaries and contingent expenses of the agencies to which they may be appointed; but if the Director of Federal Administrative Procedure shall certify, upon application of an agency, that certain of the cases coming before that agency are of an uncomplicated character, it shall be permissible to fix the salaries of hearing commissioners assigned to such cases at \$5,00 per annum, and such hearing commissioners shall be assigned to no other types of cases.

(3) **SELECTION AND APPOINTMENT.**—A hearing commissioner may be selected and appointed without regard for the provisions of the civil service or other laws applicable to the employment and compensation of officers and employees of the United States. He shall be nominated by the agency, and shall be appointed by the Office of Federal Administrative Procedure if that Office finds him to be qualified by training, experience, and character to discharge the responsibilities of the position. The Director is authorized and instructed to make such investigations as may be necessary in order to enable the Office to pass upon the qualifications of nominees.

(4) **BASIS OF NOMINATIONS.**—In the nomination or appointment of hearing commissioners no political test or qualification shall be permitted or given consideration, but all nominations and appointments shall be made on the basis of merit and deficiency alone.

(5) **TERM OF OFFICE.**—Each hearing commissioner shall be appointed for the term of seven years, and shall be removable, within that period, only—

(a) upon charges, first submitted to him, by the agency that he has been guilty of malfeasance in office or has been neglectful or inefficient in the performance of duty;

(b) upon charges of like effect, first submitted to him, by the Attorney General of the United States, which the Attorney General is authorized to make in his discretion after investigation of any complaint against a hearing commissioner made to him by a person other than the agency; or

(c) upon certification by the Director, after application by the agency, that lack of official business or insufficiency of appropriations renders necessary the termination of the hearing commissioner's appointment.

(6) **REMOVAL.**—(a) If removal of a hearing commissioner is sought on stated charges he may, within five days after service of such charges, demand a hearing upon them before the Office of Federal Administrative Procedure; or, if it so directs, before a trial board consisting of the Director and two other individuals designated by the Office. The decision of the Office or the trial board shall be accompanied by findings of fact based upon a record of the hearing and shall not be subject to review in any other forum.

Pending determination of the trial a hearing commissioner against whom charges have been brought shall be suspended from office. If the office of trial board concludes that cause for removal has been shown the hearing commissioner shall be deemed to have been removed from office as of the date when the charges were served upon him. But if it be concluded that no cause for removal has been shown the hearing commissioner shall at once be restored, unless his term of office has expired, and he shall be paid the salary which would have accrued to him but for the suspension.

(b) If removal of a hearing commissioner is upon certification as provided in paragraph 5, subsection (c), of this section, a hearing commissioner so removed shall be placed upon an eligible list for reappointment and he shall remain upon the list, if he so desires, for the balance of his term of office; and during that period no new appointments of hearing commissioners shall be made in the agency by which he has been employed except from among persons whose names appear on such list.

(7) **PROVISIONAL APPOINTMENT.**—A hearing commissioner may be appointed in the manner provided in paragraphs (3) and (4) of this section for a provisional period not to exceed one year. At the conclusion of the provisional period he shall either be appointed for a full term of seven years or be relieved from further employment as a hearing commissioner in the agency of which he has been a part. During the provisional period he may be removed solely within the discretion of the agency.

(8) **TEMPORARY APPOINTMENT.**—Without reference to the provisions of this section relative to the compensation or tenure of hearing commissioners, the agency may with the approval of the Director designate and assign a temporary commissioner for the purpose of hearing a particular case or, alternatively, for a period not in excess of thirty days, when either—

(a) the volume of cases arising within the agency is so inconsiderable that appointment of a hearing commissioner is not justified; or

(b) because of vacancy in the office of hearing commissioner, insufficiency of available personnel, or other temporary cause the assignment of one or more temporary hearing commissioners is required to permit the expeditious disposition of cases which await hearing or decision.

The assignment of a temporary hearing commissioner may be extended and renewed from time to time for additional periods upon certification, as provided in section 305 of this Act, that the need for such assignment has not terminated and that the public interest will be served by its renewal.

In designating temporary hearing commissioners, an agency shall, so far as feasible, utilize the services of a hearing commissioner attached to another agency, if the consent of that agency is obtained. The salaries of hearing commissioners temporarily assigned from one agency to another shall, during the assignment, be paid by the agency to which they are assigned.

(9) **POWERS OF PROVISIONAL AND TEMPORARY HEARING COMMISSIONERS.**—Provisional and temporary hearing commissioners shall have the powers and perform the duties of hearing commissioners.

SEC. 303. HEARING OF CASES.—(1) **HEARING BEFORE HEARING COMMISSIONER.**—Subject to the provisions of this section, every case not within the exceptions stated in section 301 of this Act shall be heard before one or more hearing commissioners.

(2) **WHEN NO HEARING REQUIRED.**—No case in which the facts are agreed need be presented for hearing before or consideration by a hearing commissioner if the agency tribunal otherwise directs.

(3) **DEFAULTS.**—Notwithstanding the provisions of other Acts, no agency shall be required to hold hearings when the parties in interest have failed to answer, if so required, a complaint or other process of like effect duly served upon them, or to appear when notified.

SEC. 304. POWERS AND DUTIES OF HEARING COMMISSIONER.—(1) **POWERS AT HEARING.**—A hearing commissioner shall have power—

- (a) to administer oaths and affirmations and take affidavits;
- (b) to issue subpoenas requiring the attendance and testimony of witnesses and the production of books, contracts, papers, documents, and other evidence;
- (c) to examine witnesses and receive evidence;
- (d) to cause testimony to be taken by deposition;
- (e) to regulate all proceedings in every hearing before him and, subject to the established rules and regulations of the agency tribunal, to do all acts and take all measures necessary for the efficient conduct of the hearing; and
- (f) to exclude evidence which is immaterial, irrelevant, unduly repetitious, or not of the sort upon which responsible persons are accustomed to rely in serious affairs.

(2) **DISOBEDIENCE OF LAWFUL ORDER.**—If any person in proceedings before a hearing commissioner disobeys or resists any lawful order or process, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath or affirmation as a witness, or thereafter refuses to be examined according to law, the agency of which the hearing commissioner is an officer shall certify the facts to the district court having jurisdiction, which shall thereupon promptly hear the evidence as to the acts complained of, and, if the evidence so warrants, order compliance or punish such person in the same manner and to the same extent as for contempt of the court.

(3) **PREHEARING CONFERENCES.**—In cases referred to him for that purpose, a hearing commissioner shall have power to initiate, conduct, or participate in prehearing proceedings looking toward informal settlement or other disposition of matters in controversy; and he shall have power to direct the parties or their representatives to appear before him for a conference to consider—

- (a) the simplification of the issues;
- (b) the necessity or desirability of amendments to the pleadings;
- (c) the possibility of obtaining stipulations of fact and of documents which will avoid unnecessary proof;
- (d) the limitation of the number of expert witnesses; and
- (e) such other matters as may aid in the disposition of the case.

(4) **HEARING COMMISSIONER'S DECISION.**—Except as otherwise provided in this Act, when the evidence has been heard by a hearing commissioner opportunity shall be given to the parties in interest to request findings of fact and conclusions of law, and to file briefs or argue orally in accordance with the procedure prescribed by the rules of the agency. The hearing commissioner shall find the facts, formulate the conclusions of law, and enter a decision in the case. Such findings, conclusions, and decision shall be stated in writing, served upon all parties in interest, reported to the agency tribunal, and become part of the record; but in any case wherein he deems it appropriate to do so, the hearing commissioner may announce his decision orally on the record, and shall be required to state his findings, conclusions, and decision more fully and in written form only if requested to do so by a party or by the agency tribunal.

SEC. 305. POWERS AND DUTIES OF CHIEF HEARING COMMISSIONER.—(1) **POWER TO HEAR CASES.**—A chief hearing commissioner shall have the powers and duties conferred on hearing commissioners by section 304 of this Act.

(2) **OTHER POWERS AND DUTIES.**—It shall be the duty of the chief hearing commissioner of an agency to—

(a) assign hearing commissioners to cases;

(b) certify to the agency that the accumulation or urgency of cases awaiting hearing or decision is such as to require the designation of one or more temporary hearing commissioners, for the purpose of hearing a named case or such cases within a period of not to exceed thirty days as may be assigned;

(c) certify to the agency that the public interest requires the extension of the designation of a temporary hearing commissioner for such further period, not to exceed thirty days, as may be stated by him, subject to the possibility of subsequent additional extension upon his further certification of continuing necessity;

(d) assign another hearing commissioner to a case in which the hearing commissioner originally assigned is unable to complete the hearing;

(e) direct that the findings of fact, conclusions, and decision in any case be prepared and issued by a hearing commissioner other than the one who presided at the hearing if the latter by reason of death, illness, removal from office, termination of appointment, or unforeseen exigency is unable to prepare the same within a reasonable time: *Provided, however,* That the hearing commissioner to whom such assignment is made may order such reargument or retrial as he may deem necessary to a just decision.

(3) **AGENCIES WHERE NO CHIEF HEARING COMMISSIONER.**—In an agency which has no chief hearing commissioner, the powers and duties assigned to the chief hearing commissioner by paragraph (2) of this section and by section 306 of this Act shall be exercised by the agency tribunal or by an official of the agency designated for that purpose by the agency tribunal.

SEC. 306. DISQUALIFICATION OF A HEARING COMMISSIONER.—Any party may file with the chief hearing commissioner a timely affidavit of disqualification of any hearing commissioner assigned to hear any case, setting forth with particularity the grounds of alleged disqualification. After such hearing or investigation as the chief hearing commissioner may deem proper, he shall promptly either find the affidavit without merit and direct the case to proceed as assigned or else assign another hearing commissioner to the case. Where such an affidavit is found to be without merit, the affidavit, any record made thereon, and the memorandum decision and order of the chief hearing commissioner shall be made a part of the record. A hearing commissioner shall withdraw from any case in respect of which he deems himself disqualified for any reason.

SEC. 307. CASES WHEN NO DECISION BY HEARING COMMISSIONER REQUIRED.—

(1) **CERTIFICATE OF EXISTENCE OF NOVEL OR COMPLEX QUESTIONS.**—Upon the conclusion of the hearing in any case the hearing commissioner may certify to the agency tribunal any questions or propositions of law concerning which instructions are desired for the proper decision of the case. Thereupon the agency tribunal may either give binding instructions on the questions and propositions certified or may require that the entire record in the case be transmitted to it for consideration and decision.

(2) **TRANSFER OF CASE ON PETITION.**—Upon the conclusion of the hearing in any case the agency tribunal, on petition of any private party therein and for good cause shown, may direct that the entire record in the case be forthwith transmitted to it for consideration and decision.

(3) **OPPORTUNITY TO PRESENT ARGUMENT.**—In any case brought before an agency tribunal pursuant to this section, the parties shall be afforded opportunity to request findings of fact and conclusions of law, and to file briefs or argue orally before the agency tribunal.

SEC. 308. EFFECT OF DECISION OF HEARING COMMISSIONER.—(1) **FINALITY WHEN NO APPEAL TAKEN OR REVIEW ORDERED.**—In the absence of timely appeal to the agency tribunal, a decision of a hearing commissioner shall without further proceedings become the final decision of the agency tribunal, and as such enforceable or reviewable to the same extent and in the same manner as though it had been duly entered by the agency tribunal as its decision, judgment, order, award, or other ultimate determination in the case; except that the agency head may on its own motion direct that a decision of a hearing commissioner be reviewed by it after notice to the parties and within such period of time and in accordance with such rules as it may prescribe.

(2) **REOPENING OF HEARING COMMISSIONER'S DECISION.**—To the same extent and in the same manner as may be permissible in respect of its own final decision,

the agency tribunal may reopen and alter, modify, or set aside in whole or in part any decision of a hearing commissioner which has been unappealed and which has become final by operation of time.

SEC. 309. REVIEW OF HEARING COMMISSIONER'S DECISION BY AGENCY TRIBUNAL.—

(1) **ASSIGNMENT OF ERRORS ON APPEAL.**—When an appeal is taken to the agency tribunal from the decision of a hearing commissioner, the appellant shall set forth with particularity each error asserted, and only such questions as are specified by the appellant's petition for review and such portions of the record as are specified in the supporting brief need be considered by the agency. Where the appellant asserts that the hearing commissioner's findings of fact are against the weight of the evidence, the agency may limit its consideration of this ground of appeal to the inquiry whether the portions of the record cited disclose that the findings are clearly against the weight of the evidence.

(2) **POWERS OF AGENCY TRIBUNAL ON APPEAL.**—Upon the review of any case the agency tribunal shall afford parties reasonable opportunity for submitting argument. The agency tribunal shall have jurisdiction to remand the case to the hearing commissioner for the purpose of receiving further evidence or making additional findings or to affirm, reverse, modify, or set aside in whole or in part the decision of the hearing commissioner, or itself to make any finding which in its judgment is proper upon the record. But if its findings differ materially from those of the hearing commissioner, the agency tribunal shall file with its decision a statement explaining the grounds of its determinations, with appropriate references to the record.

SEC. 310. RECORD ON APPEAL TO COURTS.—In any proceeding for judicial review, restraint, or enforcement of an administrative order or other determination, it shall not be necessary to print the complete record and exhibits in the case unless the court so orders. The moving party shall print as a supplement or appendix to his brief (which may be separately bound) the pertinent pleadings, orders, decisions, opinions, findings, and conclusions of both the agency tribunal and the hearing commissioner, together with relevant docket entries arranged chronologically and such other relevant portions of the record as it is desired that the court shall read. Omissions shall be indicated, reference shall be made to the pages of the typewritten transcript, and the names of witnesses shall be indexed. The responding party shall similarly print such additional portions of the record as it is desired the court shall read. The courts of the United States may by rule amplify or modify the provisions of this section to further its purpose.

SEC. 311. MISTAKE OF REMEDY NOT TO PRECLUDE JUDICIAL REVIEW.—When, in a case pending in any United States court to review an order or determination of an agency, the order or determination is subject to judicial review, but by a procedure or before a court different from that chosen by the person seeking review, the court may, instead of denying relief, take one or more of the following courses of action, on such conditions as it may deem just:

(a) proceed, if it has jurisdiction, as if the proper remedy had been sought; or permit or direct such amendment, rehearing, or remand to a lower court as it deems appropriate for a proper review of the order; or

(b) permit transfer of the case to a court having jurisdiction to review the order.

SEC. 312. TIME OF TAKING EFFECT.—Sections 310, 311, and 313 of this title shall take effect at once. The remaining sections of this title shall take effect on January 1, 1942, or in any particular agency at any prior date upon order thereof, when such agency shall conclude that available personnel and appropriations permit such provisions, or any portion thereof, to become operative.

SEC. 313. RULES AND REGULATIONS.—Each agency shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this title.

TITLE IV—DECLARATORY RULINGS

SEC. 401. POWER TO ISSUE RULINGS.—Each agency tribunal shall have power to issue declaratory rulings concerning rights, status, and other legal relations arising under the statute or the several statutes committed to its administration or arising under its regulations, in order to terminate a controversy or remove an uncertainty. The agency tribunal may refuse to render or enter a declaratory ruling where such ruling if made would not terminate the uncertainty or controversy giving rise to the proceeding, or would itself be of uncertain future application, or is deemed to have been sought for the purpose of delay, or

would impede the determination of other proceedings then pending, or, in the judgment of the agency tribunal, would be premature or otherwise inexpedient.

SEC. 402. EFFECT.—A declaratory ruling issued by an agency tribunal shall, in the absence of reversal after appropriate judicial proceedings, have the same force and effect and be binding in the same manner as a final order or other determination of that agency tribunal.

SEC. 403. PARTIES.—When a declaratory ruling is sought, all persons shall be made parties who have or claim any legal interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.

SEC. 404. JUDICIAL REVIEW.—Judicial review of a declaratory ruling made by an agency tribunal may be had in the manner and to the same extent as final orders or other determinations of that agency tribunal; except that this title shall not be deemed to modify existing provisions of law applicable to closing agreements concerning internal-revenue-tax matters. Refusal of a request that a declaratory ruling be made shall not be subject to review in any manner.

[H. R. 339, 79th Cong., 1st sess.]

A BILL To improve the administration of justice by prescribing fair administrative procedure

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, divided into sections, subsections, and subparagraphs, may be cited as the "Administrative Procedure Act".

DEFINITIONS

"Agency" means each office, board, commission, independent establishment, authority, corporation, department, bureau, division, institution, service, administration, or other unit of the Federal Government other than Congress, the courts, or the governments of the possessions, Territories, or the District of Columbia. "Rule" means the written statement of any regulation, standard, policy, interpretation, procedure, requirement, or other writing issued or utilized by any agency, of general applicability and designed to implement, interpret, or state the law or policy administered by, or the organization and procedure of, any agency; and "rule making" means the administrative procedure for the formulation of a rule. "Adjudication" means the administrative procedure of any agency, and "order" means its disposition or judgment (whether or not affirmative, negative, or declaratory in form), in a particular instance other than rule making and without distinction between licensing and other forms of administrative action or authority.

PUBLIC INFORMATION

SEC. 2. Except to the extent that there is directly involved any military, naval, or diplomatic function of the United States requiring secrecy in the public interest—

(a) RULES.—Every agency shall separately state and currently publish rules containing (1) description of its complete internal and field organization, together with the general course and method by which each type of matter directly affecting private parties is channeled and determined; (2) substantive regulations authorized by law and adopted by the agency, as well as any statements of general policy or interruptions framed by the agency and of general public application; and (3) the nature and requirements of all formal or informal procedures available to private parties, including instructions and simplified forms respecting the scope and contents of all papers, reports, or examinations. All such rules shall be filed with the Division of the Federal Register and currently published in the Federal Register.

(b) RULINGS AND ORDERS.—Every agency shall preserve and publish or make available to public inspection all general rulings on questions of law and all opinions rendered or orders issued in the course of adjudication, except to the extent (1) required by rule for good cause and expressly authorized by law to be held confidential or (2) relating to the internal management of the agency and not directly affecting the rights of, or procedures available to, the public.

(c) RELEASES.—Except to the extent that their contents are included in the

materials issued or made available pursuant to subsections (a) and (b) of this section, every agency shall, either prior to or upon issuance, file with or register and mail to the Division of the Federal Register all other releases intended for general public information or of general application or effect; and the Division shall preserve and make all such filings available to public inspection in the same manner as documents published in the Federal Register.

(d) ENFORCEMENT.—No person or party shall be prejudiced in any manner for failure to avail himself of agency organization or procedure not published as required by subsection (a) of this section, or for resort to such organization or procedure. The Comptroller General shall disallow the expenditure of public funds for the maintenance or operation of any agency organization or procedure not published as required by subsection (a).

RULE MAKING

SEC. 3. Except to the extent that there is directly involved any military, naval, or diplomatic function of the United States, and prior to the issuance of any rule—

(a) NOTICE.—Every agency shall publish general notice of proposed rule making, including: (1) a statement of the time, place, and nature of public rule-making procedures; (2) reference to the authority under which the rule is proposed; and (3) a description of the subjects and issues involved; but this subsection shall apply only to substantive rules, shall not be mandatory as to interpretative rules, general statements of policy, or rules of agency organization or administrative procedure, and shall not apply in cases in which notice is impracticable because of unavoidable lack of time or other emergency.

(b) PROCEDURES.—In all cases in which notice of rule making is required pursuant to subsection (a) of this section, the agency shall afford interested parties an adequate opportunity, reflected in its published rules of procedure, to participate in the formulation of the proposed rule or rules through (1) submission of written data or views, (2) attendance at conferences or consultations, or (3) presentation of facts or argument at informal hearings. Parties unable to be present shall be entitled as of right to submit written data or arguments. All relevant matter presented shall be recorded or summarized and given full consideration by the agency. The reasons and conclusions of the agency shall be published upon the issuance or rejection of the rules or proposals involved. Agencies are authorized to adopt procedures in addition to those required by this section, including the promulgation of rules sufficiently in advance of their effective date to permit the submission of criticisms or data by interested parties and consideration and revision or suspension of the rules by the agency. Nothing in this section shall be held to limit or repeal additional requirements imposed by law. In place of the foregoing provisions of this subsection, in all cases in which rules are required by statute to be issued only after a hearing the full hearing and decision requirements of sections 6 and 7 shall apply.

(c) PETITIONS.—Every agency authorized to issue rules shall accord any interested person the right to petition for the issuance, amendment, rescission, or clarification of any rule, in conformity with adequate published procedures for the submission and prompt consideration and disposition of such requests.

ADJUDICATION

SEC. 4. In every administrative adjudication in which the rights, duties, obligations, privileges, benefits, or other legal relations of any person are required by statute to be determined only after opportunity for an administrative hearing—

(a) NOTICE.—In cases in which the agency is the moving party it shall give due and adequate notice in writing specifying (1) the time, place, and nature of relevant administrative proceedings, (2) the particular legal authority and jurisdiction under which the proposed proceeding is to be had, and (3) the matters of fact and law in issue. In instances in which private persons are the moving parties, the agency or other respondents shall give prompt notice of averments, claims, or issues controverted in fact or law. The statement of issues of fact in the language of statutory standards delegating general authority or jurisdiction to the agency involved shall not be compliance with this subsection.

(b) PROCEDURE.—Prior to the adjudication of any case the agency shall afford all interested parties the right and benefit of fair procedure for the settlement or adjudication of all relevant issues through (1) an adequate opportunity for the informal submission and full consideration of facts, claims, argument, offers of

settlement, or proposals of adjustment; and (2) thereafter, to the extent that the parties are unable to so determine any controversy by consent, full hearing and decision shall be accorded the parties in conformity with sections 6 and 7. In cases in which determinations rest upon physical inspections or tests, opportunity for fair and adequate retest or reinspection by superior officers shall be provided, and thereafter hearing and decision in compliance with sections 6 and 7 shall be made available to the parties. In all instances in which statutes authorize and unavoidable limitations of time or other substantial factors are found to require summary action (whether of an emergency character or whether preliminary, intermediate, or final, and including the issuance of stop orders or their equivalents), no action so taken shall be lawful unless opportunity for informal conference with the agency or with responsible officers thereof shall first have been made available for the prompt adjustment or other fair disposition by consent of all relevant issues of law or fact; and no summary action so taken shall be lawful unless within a reasonable time thereafter the parties shall have been afforded an adequate opportunity for hearing and decision in accordance with sections 6 and 7.

(c) **DECLARATORY ORDERS.**—Every agency shall make and issue declaratory orders to terminate a controversy or to remove uncertainty as to the validity or application of any administrative authority, discretion, rule, or order with the same effect and subject to the same judicial review as in the case of other orders of the agency; but such orders shall be issued only upon the petition of a party in interest, in conformity with the notice and procedure required by this section, and to the extent that the agency is authorized by statute to issue orders after administrative hearing.

ANCILLARY MATTERS

SEC. 5. In connection with any administrative rule making adjudication, investigation, or other proceeding or authority—

(a) **APPEARANCE.**—Except as otherwise provided by sections 6 and 7, every agency shall accord every person subject to administrative authority and every party or intervenor (including individuals, partnerships, corporations, associations, or public or private agencies or organizations of any character) in any administrative proceeding or in connection with any administrative authority the right at all reasonable times to appear in person or by counsel before it and its officers or employees, and shall afford such parties so appearing every reasonable opportunity and facility for negotiation, information, adjustment, or formal or informal determination of any issue, request, or controversy. Every person personally appearing or summoned in any administrative proceeding shall be freely accorded the right to be accompanied and advised by counsel. Every person subject to administrative authority or party to any administrative proceeding shall be entitled to a prompt determination of any matter within the jurisdiction of any agency. In fixing the times and places for formal or informal proceedings due regard shall be had for the convenience and necessity of the parties or their representatives.

(b) **INVESTIGATIONS.**—No agency shall issue process, make inspections, require reports, or otherwise exercise investigative powers except (1) as expressly authorized by law, (2) within its jurisdiction, (3) where substantially necessary to its operations, (4) through its regularly authorized representatives, (5) without disturbing rights of personal privacy, and (6) in such manner as not to interfere with private occupation or enterprise beyond the requirements of adequate law enforcement. The exercise of such powers or use of any information so acquired for the effectuation of purposes, powers, or policies of any other agency or person shall be unlawful except as expressly authorized by statute.

(c) **SUBPENAS.**—Every agency shall issue subpoenas authorized by law to private parties upon request. Upon contest of the validity of any administrative subpoena or upon the attempted enforcement thereof, the court which would have jurisdiction under section 9 hereof shall determine all questions of law raised by the parties, including the authority or jurisdiction of the agency in law or fact, whether or not the compliance would be unreasonable or oppressive, and shall enforce (by the issuance of a judicial order requiring the future production of evidence under penalty of punishment for contempt in case of contumacious failure to do so) or refuse to enforce such subpoena accordingly.

(d) **DENIALS.**—Every agency shall give prompt notice of the denial, in whole or in part, of any application, petition, or other request of any private party. Such notice shall be accompanied by a statement of the grounds for such denial and any further administrative procedures available to such party.

(e) **RETROACTIVITY.**—No rule or order shall be retroactive or effective prior to its publication or service unless such effect is both expressly authorized by law and required for good cause. Such required publication or service shall precede for a reasonable time the effective date of the rule or order.

(f) **RECORDS.**—Upon proper request matters of official record shall be made available to all interested persons except personal data, information required by law to be held confidential, or, for good cause found and upon published rule, other specified classes of information.

(g) **ATTORNEYS.**—No agency shall impose requirements for the admission of attorneys to practice before it or its officers or employees; and attorneys in good standing admitted to practice in the highest court of any State or other place within the jurisdiction of the United States or in any Federal court shall, upon their oral or written representation to that effect, forthwith be admitted to such practice. No agency shall debar or suspend any such attorney from such practice except for violation of law, and such action shall be subject to judicial review de novo upon the law and the facts.

HEARINGS

SEC. 6. No administrative procedure shall satisfy the requirements of a full hearing pursuant to section 3 or 4 unless—

(a) **PRESIDING OFFICERS.**—(1) The case shall be heard by Commissioners or Deputy Commissioners appointed as provided herein, except where statutes authorize action by representatives of parties or organizations of parties. In the event hearing or deciding officers are no longer in office or are unavailable because of death, illness, or suspension, other such officers may be substituted in the sound discretion of the Commissioners at any stage of proceedings required by this section and section 7.

(2) The functions of all hearing officers, as well as of those participating in decisions in conformity with section 7, shall be conducted in an impartial manner, in accord with the requirements of this Act, with due regard for the rights of all parties, and consistent with the orderly and prompt dispatch of proceedings. Such officers, except to the extent required for the disposition of ex parte matters authorized by law, shall not engage in interviews with, or receive evidence or argument from, any party directly or indirectly except upon opportunity for all other parties to be present and in accord with the public procedures authorized by this section and section 7. Copies of all communications with such officers shall be served upon all the parties. Upon the filing of a timely affidavit by any party in interest, of personal bias or disqualification or conduct contrary to law of any such officer at any stage of proceedings, another Commissioner or Deputy Commissioner, after hearing the facts, shall make findings, conclusions, and a decision as to such disqualification which shall become a part of the record in the case and be reviewable in conformity with section 9 and subsection (c) of section 7.

(3) By and with the advice and consent of the Senate, there shall be appointed by the President three Commissioners, at an annual salary of \$10,000, who shall not be removable except for good cause shown, may annually designate one of their number as the presiding Commissioner, and shall hold office for terms of twelve years except that the first three appointments shall be for four, eight, and twelve years, respectively, and any unexpired term shall be filled upon appointment for the unexpired portion only.

(4) Without regard to the civil-service laws or the Classification Act, the Commissioners shall appoint, in lieu of examiners now employed by agencies for the performance of functions subject to this section and section 7, as many duly qualified and competent Deputy Commissioners as may from time to time be necessary for the hearing or decision of cases, who shall perform no other duties, shall be removable only after hearing and for good cause shown, and shall receive a fixed salary not subject to change except that the Commissioners shall survey and adjust such salaries within minimum and maximum limits of \$3,000 and \$9,000, respectively, in order to assure adequacy and uniformity in accordance with the nature and importance of the duties performed.

(5) The Commissioners shall hear and decide cases or assign Deputy Commissioners to such duties in accordance with such rules as they may adopt and publish in conformity with this Act, make such appointments and provide such clerical assistance and facilities as may be necessary to the functions assigned by this Act, and submit full annual reports to Congress in addition to such special

reports or recommendations from time to time as they deem advisable. There is authorized to be appropriated such funds as may be necessary for the purposes of this section.

(c) **HEARING POWERS.**—Officers presiding at hearings shall have power, in accordance with the published rules of the agency so far as not inconsistent with this Act or with the rules promulgated by the Commissioners provided in subsection (a) of this section, to (1) administer oaths and affirmations; (2) issue such subpoenas as may be authorized by law; (3) rule upon offers of proof and receive relevant oral or documentary evidence; (4) take or cause depositions to be taken whenever the ends of justice would be served thereby; (5) regulate the course of the hearing or the conduct of the parties; (6) hold informal conferences for the settlement or simplification of the issues by consent of the parties; (7) dispose of procedural motions, requests for adjournment, and similar matters; and (8) make or participate in decisions in conformity with section 7.

(d) **EVIDENCE.**—No sanction, prohibition, or requirement shall be imposed or grant, permission, or benefit withheld in whole or in part except upon relevant evidence which on the whole record shall be competent, credible, and substantial. The rules of evidence recognized in judicial proceedings conducted without a jury shall govern the proof, decision, and administrative or judicial review of all questions of fact. The character and conduct of every person or enterprise shall be presumed lawful until the contrary shall have been shown by competent evidence. Whenever the burden of proof is upon private parties to show right or entitlement to privileges, permits, benefits, or statutory exceptions, their competent evidence (other than opinions or conclusions) to that effect shall be presumed true unless discredited or contradicted by other competent evidence. Every party shall have the right of cross-examination and the submission of rebuttal evidence in open hearing, except that any agency may adopt procedures for the disposition of contested matters in whole or in part upon the submission of sworn statements or written evidence subject to opportunity for such cross-examination or rebuttal. The taking of official notice as to facts beyond the proof adduced in conformity with this section shall be unlawful unless of a matter of generally recognized or scientific knowledge of established character and unless the parties shall both be notified (either upon the record or in reports, findings, or decisions) of the specific facts so noticed and accorded an adequate opportunity to show the contrary by evidence.

(e) **RECORD.**—The transcript of testimony adduced and exhibits admitted in conformity with this section, together with all pleadings, exceptions, motions, requests, and papers filed by the parties, other than separately presented briefs or arguments of law, shall constitute the complete and exclusive record and be made available to all the parties.

DECISIONS

SEC. 7. In all cases in which an administrative hearing is required to be conducted in conformity with section 6—

(a) **INITIAL SUBMISSION.**—At the conclusion of the reception of evidence, the officer or officers who presided shall afford the parties adequate opportunity for the submission of briefs, proposed findings and conclusions, and oral argument.

(b) **DECISION.**—After the initial submission pursuant to subsection (a) of this section, the officer or officers who heard the evidence shall find all the relevant facts and enter an appropriate order, award, judgment, or other form of determination. In the absence (within such reasonable time as it may prescribe by general rule) of either an appeal to the agency (upon such specification of errors as it may require by general rule) or review upon the agency's own motion and specification of issues, such decisions shall without further proceedings become final determinations and be effective, enforceable, and subject to judicial review pursuant to section 9 to the same extent and in the same manner as though duly heard, decided, and entered by the agency itself.

(c) **AGENCY REVIEW.**—Upon appeal to the agency from the decisions provided in subsection (b) of this section, the highest authority in the agency shall (1) afford the parties due notice of the specific issues to be reviewed, (2) provide an adequate opportunity for the presentation of briefs, proposed findings and conclusions, and oral argument by the parties, and (3) affirm, reverse, modify, change, alter, amend, remand, or set aside in whole or in part such decision; but the failure of the parties to seek, or of the agency to require, such review

shall not affect the right of judicial review pursuant to section 9. Such review by the agency shall be confined to matters of law and administrative discretion.

(d) **CONSIDERATIONS OF CASES.**—All issues of fact shall be considered and determined exclusively upon the record required to be made in conformity with section 6. In the decision of any case initially or upon review by the agency, all hearing, deciding, or reviewing officers shall personally consider the whole or such parts of the record as are cited by the parties, with no other aid than that of clerks or assistants who perform no other duties; and no such officer, clerk, or assistant shall consult with or receive oral or written comment, advice, data, or recommendations respecting any such case from other officers or employees of the agency or from third parties.

(e) **FINDINGS AND OPINIONS.**—All final decisions and determinations, whether initially or upon review by the ultimate authority within the agency, shall be stated in writing and accompanied by a statement of reasons, findings of fact, and conclusions of law upon all relevant issues raised including matters of administrative discretion as well as of law or fact. The findings, conclusions, and stated reasons shall encompass all relevant facts of record and shall themselves be relevant to, and adequate support, the decision and order or award entered.

(f) **SERVICE.**—All administrative findings, conclusions, opinions, or statements of reasons, rules, or orders required to be made in conformity with this section shall be served upon all the parties and intervenors or other participants in the proceeding as well as upon all persons whose attempted intervention or participation has been denied and all interested persons who request in writing to be so notified.

PENALTIES AND BENEFITS

SEC. 8. In addition to all other limitations or requirements provided by law—

(a) **LIMITATIONS.**—No agency shall by order, rule, or other act (1) impose or grant any form of sanction or relief not specified by statute and within the jurisdiction expressly delegated to the agency by law; (2) withhold relief in derogation of private right or statutory entitlement; or (3) impose sanctions inapplicable to the factual situation presented in any case. Sanction or relief includes, but is not limited to, the imposition, withholding, grant, denial, suspension, withdrawal, revocation, or annulment, as the case may be, of any form of privilege, license, permission, remedy, benefit, assistance, prohibition, requirement, limitation, penalty, fine, taking or seizure of private property, or assessment of damages, costs, charges, or fees. The exercise, or attempted exercise, of implied powers by any agency to make substantive rules, adjudicate cases, or impose penalties or requirements or withhold benefits is unlawful for any purpose.

(b) **LICENSES.**—In addition to the requirements of subsection (a) of this section, (1) in any case, except financial reorganization, in which an administrative license (including permit, certificate, approval, registration, charter, membership, or other form of permission) is required by law and due request is made therefor such license shall be deemed granted in full to the extent of the authority of the agency unless the agency shall within not more than sixty days of such application have made its decision or set the matter for formal proceedings required to be conducted pursuant to sections 6 and 7 of this Act; (2) except in cases of clearly demonstrated willfulness or those in which public health, morals, or safety require otherwise, no withdrawal, suspension, revocation, or annulment of any such license shall be lawful unless, prior to the institution of administrative proceedings therefor, any facts or conduct of which the agency has notice and which may warrant such action shall have been called to the attention of the licensee in writing and such person shall have been accorded a reasonable opportunity to demonstrate or achieve compliance with all lawful requirements; (3) no such license with reference to any business, occupation, or activity of a continuing nature shall expire, in any case in which the holder thereof has made due and timely application for a renewal or a new license, until such application shall have been finally determined by the agency concerned.

(c) **PUBLICITY.**—Except as expressly authorized by law, no agency shall, directly or indirectly, issue publicity reflecting adversely upon any person, product, commodity, security, private activity, or enterprise otherwise than by issuance of the full texts of authorized public documents, impartial summaries of the positions of all parties to any controversy, or the issuance of legal notice of public proceedings within its jurisdiction.

JUDICIAL REVIEW

SEC. 9. In connection with any Act, rule, order, process, or proceeding of any agency—

(a) **RIGHT OF REVIEW.**—Any party adversely affected shall be entitled to judicial review of any issue of law in accordance with this section; and every reviewing court shall have plenary authority to render such decision and grant such relief as right and justice may demand in conformity with law and this Act.

(b) **FORM OF ACTION.**—In addition to judicial review incident to proceedings for any form of criminal or civil enforcement of administrative rules, orders, or process, the form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter or, in the absence or inadequacy thereof, any applicable form of legal action including actions for declaratory judgments or writs of injunction or habeas corpus. Any party adversely affected or threatened to be so affected may, through declaratory judgment procedure with or without prior resort to the issuing agency, secure a judicial declaration of rights respecting the validity or application of any administrative act, rule, or order. Except as otherwise provided in connection with special statutory review proceedings, any action for judicial review may be brought against one or more of the following: (1) The agency in its official title at the time of the filing of the proceeding; (2) the officer who is the head of, or one or more of the officers comprising the highest authority in, the agency; or (3) any one or more officers acting in the manner challenged or enforcing or authorized to enforce the rule or order involved.

(c) **COURTS AND VENUE.**—The review guaranteed by this section shall be had upon application to the courts named in statutes especially providing for judicial review or, in the absence or inadequacy thereof, to the district court of the United States (including the District Court of the District of Columbia) in the State, district, and division where the party seeking court review or any one of them resides or has his principal place of business or in case such party is a corporation then where it has its principal place of business or engages in business. Whenever a court shall hold that it is without jurisdiction on the ground that application should have been made to some other court, it shall transmit the pleadings and other papers to a court having jurisdiction which shall, after permitting any necessary amendments, thereupon proceed as in other cases and as though the proceeding had originally been filed therein. In any case in which application for such review is filed, timely amendments shall be permitted to state additional or subsequent facts and seek additional remedies or relief. Any court having jurisdiction of any part of any controversy regarding any administrative action, rule, or order shall have full jurisdiction over all issues in such controversy, with authority to grant all pertinent relief, notwithstanding that some other court may have jurisdiction of some of the issues or parties. The court review herein provided shall be commenced by the complaining party filing in the office of the clerk of the district court having jurisdiction a written complaint or petition setting forth the grounds of complaint and the relief sought. Service of process shall be had and completed by sending by registered mail a true copy of the complaint or petition to the Attorney General of the United States, or to any Assistant Attorney General of the United States at Washington, District of Columbia, and thereupon the cause, except as herein otherwise provided, shall be proceeded with in conformity with the applicable "Rules of Civil Procedure for the District Courts of the United States."

(d) **REVIEWABLE ACTS.**—Any rule shall be reviewable as provided in this section upon its judicial or administrative application or threatened application to any person, situation, or subject; and, whether or not declaratory or negative in form or substance, any administrative act or order directing action, assessing penalties, prohibiting conduct, affecting rights or property, or denying in whole or in part claimed rights, remedies, privileges, permissions, moneys, or benefits under the Constitution, statutes, or other law of the land, except to the extent that any matter of fact is both substantially in dispute and expressly committed by law to absolute executive discretion, shall be subject to review pursuant to this section; but only final actions, rules, or orders, or those for which there is no other adequate judicial remedy (including the neglect, failure, or refusal of any agency to act upon any application for a rule, order, permission, or the amendment or modification thereof, within the time prescribed by law or within a reasonable time), shall be subject to such review; any preliminary or inter-

mediate act or order not directly reviewable shall be subject to review upon the review of final acts, rules, or orders; and any action, rule, or order shall be final for purposes of the review guaranteed by this section notwithstanding that no petition for rehearing, reconsideration, reopening, or declaratory order has been presented to or ruled upon by the agency involved.

(e) **INTERIM RELIEF.**—Unless the agency of its own motion or on request shall, as hereby authorized, postpone the effective date of any action, rule, or order pending judicial review, every reviewing court, and every court to which a case may be taken on appeal from, or upon application for certiorari or other writ to, a reviewing court, shall have full authority to issue all necessary and appropriate writs, restraining or stay orders, or preliminary or temporary injunctions, mandatory or otherwise, required in the judgment of such court to preserve the status or rights of the parties pending full review and determination as provided in this section; and any such court shall postpone the effective date of any administrative action, rule, or order to the extent necessary to accord the parties a fair opportunity for judicial review of any substantial question of law. Whenever any legal right, privilege, immunity, permission, relief, or benefit expires or is denied, withdrawn, or withheld, in whole or in part, statutes conferring administrative authority in the premises shall be construed, to the extent that such courts so order, to grant or extend the relief requested so far as necessary to preserve the status of the parties or permit just determination and full relief pursuant to this section.

(f) **SCOPE OF REVIEW.**—With reference to any action or the application, threatened application, or terms of any rule or order and notwithstanding the form of the proceeding or whether brought by private parties for review or by public officers or others for enforcement, the reviewing court shall consider and decide, so far as necessary to its decision and where raised by the parties, all relevant questions of law arising upon the whole record or such parts thereof as may be cited by any of the parties. Upon such review, the court shall hold unlawful such act or set aside such application, rule, order, or any administrative finding or conclusion made, sanction or requirement imposed, or permission or benefit withheld to the extent that it finds them (1) arbitrary or capricious; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of or without lawful authority, jurisdiction, or limitations or short of statutory right, grant, privilege, or benefit; (4) made or issued without due observance of procedures required by law; (5) unsupported by competent, material, convincing, and substantial evidence, upon the whole record as reviewed by the court, in any case in which the action, rule, or order is required by statute to be taken, made, or issued after administrative hearing; or (6) unwarranted by the facts to the extent that the facts in any case are subject to trial *de novo* by the reviewing court. The court shall interpret and determine the applicability of any administrative rule or order. The relevant facts shall be tried and determined *de novo* by the original court of review in all cases in which administrative adjudications are not required by statute to be made upon administrative hearing, and in any case such court shall try and determine *de novo* the facts as to the failure of any agency or agent thereof to comply with the provisions of this Act. Except as to compromises or settlements freely entered, no contract or other agreement shall be held to diminish the right or scope of review provided by this section.

(g) **APPELLATE REVIEW.**—The judgment of any court of review shall be appealable in accordance with existing provisions of law and, in any case in which there is no appeal thereto as of right and probable ground appears that any person has been denied the full benefit of this Act, reviewable by the Supreme Court on writ of certiorari.

(h) **OTHER PROVISIONS OF LAW.**—All provisions or additional requirements of law applicable to the judicial review of acts, rules, or orders generally or of particular agencies or subject matter, except as the same may be inconsistent with the provisions of this Act, shall remain valid and binding as shall all statutory provisions expressly precluding judicial review of any agency or function or prescribing a broader scope of review than that provided in this Act.

SEPARATION OF FUNCTIONS

SEC. 10. No proceeding, rule, or order subject to the requirements of sections 6 and 7 shall be lawful unless with reference to that type of proceeding the agency involved shall have previously and completely delegated either to one or more of its responsible officers or to one or more of its members all investigative and

prosecuting functions (over which the agency or its remaining membership shall thereafter have exercised no control or supervision) and the officers or members so designated shall have had no part in the decision or review of such cases; and, in any agency in which the ultimate authority so subject to sections 6 and 7 is vested in one person, such individual shall wholly delegate such investigating and prosecuting functions to responsible officers. In any complaint or similar paper the agency may appear in name as the moving party; and nothing in this section shall be taken to prevent the supervision, consideration, or acceptance of settlements or adjustments by hearing or deciding officers. Every general delegation and separation of functions required of any agency by this section shall be specifically provided in its rules published pursuant to section 2.

CONSTRUCTION AND EFFECT

SEC. 11. Nothing in this Act shall be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise expressly authorized or required by law, all rules, requirements, limitations, rights, privileges, and precedents relating to evidence or procedure shall apply equally to public agencies and private parties. If any provision of this Act or the application thereof is held invalid, the remainder of this Act or other applications of such provision shall not be affected. Every agency is hereby granted all necessary authority to comply with the requirements of this Act; and no subsequent legislation shall be held to supersede or modify the provisions of this Act unless such legislation shall do so expressly and by reference to the provisions of this Act so affected. This Act shall take effect three months after its approval except that sections 6 and 7 shall take effect six months after such approval. In any agency examiners authorized by law may exercise the functions of commissioners or deputy commissioners provided by subsection (a) of section 6 until one year after the termination of the present hostilities, and no procedural requirement of this Act shall be mandatory as to any administrative proceeding formally initiated or completed prior to the effective date of such requirement.

[H. R. 1117, 79th Cong., 1st sess.]

A BILL To improve the administration of justice by prescribing fair administrative procedure

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, divided into sections, subsections, and subparagraphs, may be cited as the "Administrative Procedure Act".

DEFINITIONS

"Agency" means each office, board, commission, independent establishment, authority, corporation, department, bureau, division, institution, service, administration, or other unit of the Federal Government other than Congress, the courts, or the governments of the possessions, Territories, or the District of Columbia. "Rule" means the written statement of any regulation, standard, policy, interpretation, procedure, requirement, or other writing issued or utilized by any agency, of general applicability and designed to implement, interpret, or state the law or policy administered by, or the organization and procedure of, any agency; and "rule making" means the administrative procedure for the formulation of a rule. "Adjudication" means the administrative procedure of any agency, and "order" means its disposition or judgment (whether or not affirmative, negative, or declaratory in form), in a particular instance other than rule making and without distinction between licensing and other forms of administrative action or authority.

PUBLIC INFORMATION

SEC. 2. Except to the extent that there is directly involved any military, naval, or diplomatic function of the United States requiring secrecy in the public interest—

(a) RULES.—Every agency shall separately state and currently publish rules containing (1) descriptions of its complete internal and field organization, together with the general course and method by which each type of matter directly

affecting private parties is channeled and determined; (2) substantive regulations authorized by law and adopted by the agency, as well as any statements of general policy or interpretations framed by the agency and of general public application; and (3) the nature and requirements of all formal or informal procedures available to private parties, including instructions and simplified forms respecting the scope and contents of all papers, reports, or examinations. All such rules shall be filed with the Division of the Federal Register and currently published in the Federal Register.

(b) **RULINGS AND ORDERS.**—Every agency shall preserve and publish or make available to public inspection all general rulings on questions of law and all opinions rendered or orders issued in the course of adjudication, except to the extent (1) required by rule for good cause and expressly authorized by law to be held confidential or (2) relating to the internal management of the agency and not directly affecting the rights of, or procedures available to, the public.

(c) **RELEASES.**—Except to the extent that their contents are included in the materials issued or made available pursuant to subsections (a) and (b) of this section, every agency shall, either prior to or upon issuance, file with or register and mail to the division of the Federal Register all other releases intended for general public information or of general application or effect; and the Division shall preserve and make all such filings available to public inspection in the same manner as documents published in the Federal Register.

(d) **ENFORCEMENT.**—No person or party shall be prejudiced in any manner for failure to avail himself of agency organization or procedure not published as required by subsection (a) of this section, or for resort to such organization or procedure. The Comptroller General shall disallow the expenditure of public funds for the maintenance or operation of any agency organization or procedure not published as required by subsection (a).

RULE MAKING

SEC. 3. Except to the extent that there is directly involved any military, naval, or diplomatic function of the United States, and prior to the issuance of any rule—

(a) **NOTICE.**—Every agency shall publish general notice of proposed rule making, including (1) a statement of the time, place, and nature of public rule-making procedures; (2) reference to the authority under which the rule is proposed; and (3) a description of the subjects and issues involved; but this subsection shall apply only to substantive rules, shall not be mandatory as to interpretative rules, general statements of policy, or rules of agency organization or administrative procedure, and shall not apply in cases in which notice is impracticable because of unavoidable lack of time or other emergency.

(b) **PROCEDURES.**—In all cases in which notice of rule making is required pursuant to subsection (a) of this section, the agency shall afford interested parties an adequate opportunity, reflected in its published rules of procedure, to participate in the formulation of the proposed rule or rules through (1) submission of written data or views, (2) attendance at conferences or consultations, or (3) presentation of facts or argument at informal hearings. Parties unable to be present shall be entitled as of right to submit written data or arguments. All relevant matter presented shall be recorded or summarized and given full consideration by the agency. The reasons and conclusions of the agency shall be published upon the issuance or rejection of the rules or proposals involved. Agencies are authorized to adopt procedures in addition to those required by this section, including the promulgation of rules sufficient in advance of their effective date to permit the submission of criticisms or data by interested parties and consideration and revision or suspension of the rules by the agency. Nothing in this section shall be held to limit or repeal additional requirements imposed by law. In place of the foregoing provisions of this subsection, in all cases in which rules are required by statute to be issued only after a hearing the full hearing and decision requirements of sections 6 and 7 shall apply.

(c) **PETITIONS.**—Every agency authorized to issue rules shall accord any interested person the right to petition for the issuance, amendment, rescission, or clarification of any rule, in conformity with adequate published procedures for the submission and prompt consideration and disposition of such requests.

ADJUDICATION

SEC. 4. In every administrative adjudication in which the rights, duties, obligations, privileges, benefits, or other legal relations of any person are required by statute to be determined only after opportunity for an administrative hearing—

(a) NOTICE.—In cases in which the agency is the moving party it shall give due and adequate notice in writing, specifying (1) the time, place, and nature of relevant administrative proceedings, (2) the particular legal authority and jurisdiction under which the proposed proceeding is to be had, and (3) the matters of fact and law in issue. In instances in which private persons are the moving parties, the agency or other respondents shall give prompt notice of averments, claims, or issues controverted in fact or law. The statement of issues of fact in the language of statutory standards delegating general authority or jurisdiction to the agency involved shall not be compliance with this subsection.

(b) PROCEDURE.—Prior to the adjudication of any case, the agency shall afford all interested parties the right and benefit of fair procedure for the settlement or adjudication of all relevant issues through (1) an adequate opportunity for the informal submission and full consideration of facts, claims, argument, offers of settlement, or proposals of adjustment; and (2) thereafter, to the extent that the parties are unable to so determine any controversy by consent, full hearing and decision shall be accorded the parties in conformity with sections 6 and 7. In cases in which determinations rest upon physical inspections or tests, opportunity for fair and adequate retest or reinspection by superior officers shall be provided, and thereafter hearing and decision in compliance with sections 6 and 7 shall be made available to the parties. In all instances in which statutes authorize and unavoidable limitations of time or other substantial factors are found to require summary action (whether of an emergency character or whether preliminary, intermediate, or final, and including the issuance of stop orders or their equivalents), no action so taken shall be lawful unless opportunity for informal conference with the agency or with responsible officers thereof shall first have been made available for the prompt adjustment or other fair disposition by consent of all relevant issues of law or fact; and no summary action so taken shall be lawful unless within a reasonable time thereafter the parties shall have been afforded an adequate opportunity for hearing and decision in accordance with sections 6 and 7.

(c) DECLARATORY ORDERS.—Every agency shall make and issue declaratory orders to terminate a controversy or to remove uncertainty as to the validity or application of any administrative authority, discretion, rule, or order with the same effect and subject to the same judicial review as in the case of other orders of the agency; but such orders shall be issued only upon the petition of a party in interest, in conformity with the notice and procedure required by this section, and to the extent that the agency is authorized by statute to issue orders after administrative hearing.

ANCILLARY MATTERS

SEC. 5. In connection with any administrative rule making adjudication, investigation, or other proceeding or authority—

(a) APPEARANCE.—Except as otherwise provided by sections 6 and 7, every agency shall accord every person subject to administrative authority and every party or intervenor (including individuals, partnerships, corporations, associations, or public or private agencies or organizations of any character) in any administrative proceeding or in connection with any administrative authority the right at all reasonable times to appear in person or by counsel before it and its officers or employees, and shall afford such parties so appearing every reasonable opportunity and facility for negotiation, information, adjustment, or formal or informal determination of any issue, request, or controversy. Every person personally appearing or summoned in any administrative proceeding shall be freely accorded the right to be accompanied and advised by counsel. Every person subject to administrative authority or party to any administrative proceeding shall be entitled to a prompt determination of any matter within the jurisdiction of any agency. In fixing the times and places for formal or informal proceedings due regard shall be had for the convenience and necessity of the parties or their representatives.

(b) **INVESTIGATIONS.**—No agency shall issue process, make inspections, require reports, or otherwise exercise investigative powers except (1) as expressly authorized by law, (2) within its jurisdiction, (3) where substantially necessary to its operations, (4) through its regularly authorized representatives, (5) without disturbing rights of personal privacy, and (6) in such manner as not to interfere with private occupation or enterprise beyond the requirements of adequate law enforcement. The exercise of such powers or use of any information so acquired for the effectuation of purposes, powers, or policies of any other agency or person shall be unlawful except as expressly authorized by statute.

(c) **SUBPENAS.**—Every agency shall issue subpoenas authorized by law to private parties upon request. Upon contest of the validity of any administrative subpoena or upon the attempted enforcement thereof, the court which would have jurisdiction under section 9 hereof shall determine all questions of law raised by the parties, including the authority or jurisdiction of the agency in law or fact, whether or not the compliance would be unreasonable or oppressive, and shall enforce (by the issuance of a judicial order requiring the future production of evidence under penalty of punishment for contempt in case of contumacious failure to do so) or refuse to enforce such subpoena accordingly.

(d) **DENIALS.**—Every agency shall give prompt notice of the denial, in whole or in part, of any application, petition, or other request of any private party. Such notice shall be accompanied by a statement of the grounds for such denial and any further administrative procedures available to such party.

(e) **RETROACTIVITY.**—No rule or order shall be retroactive or effective prior to its publication or service unless such effect is both expressly authorized by law and required for good cause. Such required publication or service shall precede for a reasonable time the effective date of the rule or order.

(f) **RECORDS.**—Upon proper request matters of official record shall be made available to all interested persons except personal data, information required by law to be held confidential, or, for good cause found and upon published rule, other specified classes of information.

(g) **ATTORNEYS.**—No agency shall impose requirements for the admission of attorneys to practice before it or its officers or employees; and attorneys in good standing admitted to practice in the highest court of any State or other place within the jurisdiction of the United States or in any Federal court shall, upon their oral or written representation to that effect, forthwith be admitted to such practice. No agency shall debar or suspend any such attorney from such practice except for violation of law, and such action shall be subject to judicial review de novo upon the law and the facts.

HEARINGS

SEC. 6. No administrative procedure shall satisfy the requirements of a full hearing pursuant to section 3 or 4 unless—

(a) **PRESIDING OFFICERS.**—(1) The case shall be heard by Commissioners or Deputy Commissioners appointed as provided herein, except where statutes authorize action by representatives of parties or organizations of parties. In the event hearing or deciding officers are no longer in office or are unavailable because of death, illness, or suspension, other such officers may be substituted in the sound discretion of the Commissioners at any stage of proceedings required by this section and section 7.

(2) The functions of all hearing officers, as well as of those participating in decisions in conformity with section 7, shall be conducted in an impartial manner, in accord with the requirements of this Act, with due regard for the rights of all parties, and consistent with the orderly and prompt dispatch of proceedings. Such officers, except to the extent required for the disposition of ex parte matters authorized by law, shall not engage in interviews with, or receive evidence or argument from, any party directly or indirectly except upon opportunity for all other parties to be present and in accord with the public procedures authorized by this section and section 7. Copies of all communications with such officers shall be served upon all the parties. Upon the filing of a timely affidavit by any party in interest, of personal bias or disqualification or conduct contrary to law of any such officer at any stage of proceedings, another Commissioner or Deputy Commissioner, after hearing the facts shall make findings, conclusions, and a decision as to such disqualification which shall become a part of the record in

the case and be reviewable in conformity with section 9 and subsection (c) of section 7.

(3) By and with the advice and consent of the Senate, there shall be appointed by the President three Commissioners, at an annual salary of \$10,000, who shall not be removable except for good cause shown, may annually designate one of their number as the presiding Commissioner, and shall hold office for terms of twelve years except that the first three appointments shall be for four, eight, and twelve years, respectively, and any unexpired term shall be filled upon appointment for the unexpired portion only.

(4) Without regard to the civil-service laws or the Classification Act, the Commissioners shall appoint, in lieu of examiners now employed by agencies for the performance of functions subject to this section and section 7, as many duly qualified and competent Deputy Commissioners as may from time to time be necessary for the hearing or decision of cases, who shall perform no other duties, shall be removable only after hearing and for good cause shown, and shall receive a fixed salary not subject to change except that the Commissioners shall survey and adjust such salaries within minimum and maximum limits of \$3,000 and \$9,000, respectively, in order to assure adequacy and uniformity in accordance with the nature and importance of the duties performed.

(5) The Commissioners shall hear and decide cases or assign Deputy Commissioners to such duties in accordance with such rules as they may adopt and publish in conformity with this Act, make such appointments and provide such clerical assistance and facilities as may be necessary to the functions assigned by this Act, and submit full annual reports to Congress in addition to such special reports or recommendations from time to time as they deem advisable. There is authorized to be appropriated such funds as may be necessary for the purposes of this section.

(c) **HEARING POWERS.**—Officers presiding at hearings shall have power, in accordance with the published rules of the agency so far as not inconsistent with this Act or with the rules promulgated by the Commissioners provided in subsection (a) of this section, to (1) administer oaths and affirmations; (2) issue such subpoenas as may be authorized by law; (3) rule upon offers of proof and receive relevant oral or documentary evidence; (4) take or cause depositions to be taken whenever the ends of justice would be served thereby; (5) regulate the course of the hearing or the conduct of the parties; (6) hold informal conferences for the settlement or simplification of the issues by consent of the parties; (7) dispose of procedural motions, requests for adjournment, and similar matters; and (8) make or participate in decisions in conformity with section 7.

(d) **EVIDENCE.**—No sanction, prohibition, or requirement shall be imposed or grant, permission, or benefit withheld in whole or in part except upon relevant evidence which on the whole record shall be competent, credible, and substantial. The rules of evidence recognized in judicial proceedings conducted without a jury shall govern the proof, decision, and administrative or judicial review of all questions of fact. The character and conduct of every person or enterprise shall be presumed lawful until the contrary shall have been shown by competent evidence. Whenever the burden of proof is upon private parties to show right or entitlement to privileges, permits, benefits, or statutory exceptions, their competent evidence (other than opinions or conclusions) to that effect shall be presumed true unless discredited or contradicted by other competent evidence. Every party shall have the right of cross-examination and the submission of rebuttal evidence in open hearing, except that any agency may adopt procedures for the disposition of contested matters in whole or in part upon the submission of sworn statements or written evidence subject to opportunity for such cross-examination or rebuttal. The taking of official notice as to facts beyond the proof adduced in conformity with this section shall be unlawful unless of a matter of generally recognized or scientific knowledge of established character and unless the parties shall both be notified (either upon the record or in reports, findings, or decisions) of the specific facts so noticed and accorded an adequate opportunity to show the contrary by evidence.

(e) **RECORD.**—The transcript of testimony adduced and exhibits admitted in conformity with this section, together with all pleadings, exceptions, motions, requests, and papers filed by the parties, other than separately presented briefs or arguments of law, shall constitute the complete and exclusive record and be made available to all the parties.

DECISIONS

SEC. 7. In all cases in which an administrative hearing is required to be conducted in conformity with section 6—

(a) **INITIAL SUBMISSION.**—At the conclusion of the reception of evidence, the officer or officers who presided shall afford the parties adequate opportunity for the submission of briefs, proposed findings and conclusions, and oral argument.

(b) **DECISION.**—After the initial submission pursuant to subsection (a) of this section, the officer or officers who heard the evidence shall find all the relevant facts and enter an appropriate order, award, judgment, or other form of determination. In the absence (within such reasonable time as it may prescribe by general rule) of either an appeal to the agency (upon such specification of errors as it may require by general rule) or review upon the agency's own motion and specification of issues, such decisions shall without further proceedings become final determinations and be effective, enforceable, and subject to judicial review pursuant to section 9 to the same extent and in the same manner as though duly heard, decided, and entered by the agency itself.

(c) **AGENCY REVIEW.**—Upon appeal to the agency from the decisions provided in subsection (b) of this section, the highest authority in the agency shall (1) afford the parties due notice of the specific issues to be reviewed, (2) provide an adequate opportunity for the presentation of briefs, proposed findings and conclusions, and oral argument by the parties, and (3) affirm, reverse, modify, change, alter, amend, remand, or set aside in whole or in part such decision; but the failure of the parties to seek, or of the agency to require, such review shall not affect the right of judicial review pursuant to section 9. Such review by the agency shall be confined to matters of law and administrative discretion.

(d) **CONSIDERATION OF CASES.**—All issues of fact shall be considered and determined exclusively upon the record required to be made in conformity with section 6. In the decision of any case initially or upon review by the agency, all hearing, deciding, or reviewing officers shall personally consider the whole or such parts of the record as are cited by the parties, with no other aid than that of clerks or assistants who perform no other duties; and no such officer, clerk, or assistant shall consult with or receive oral or written comment, advice, data, or recommendations respecting any such case from other officers or employees of the agency or from third parties.

(e) **FINDINGS AND OPINIONS.**—All final decisions and determinations, whether initially or upon review by the ultimate authority within the agency, shall be stated in writing and accompanied by a statement of reasons, findings of fact, and conclusions of law upon all relevant issues raised including matters of administrative discretion as well as of law or fact. The findings, conclusions, and stated reasons shall encompass all relevant facts of record and shall themselves be relevant to, and adequate support, the decision and order or award entered.

(f) **SERVICE.**—All administrative findings, conclusions, opinions, or statements of reasons, rules, or orders required to be made in conformity with this section shall be served upon all the parties and intervenors or other participants in the proceeding as well as upon all persons whose attempted intervention or participation has been denied and all interested persons who request in writing to be so notified.

PENALTIES AND BENEFITS

SEC. 8. In addition to all other limitations or requirements provided by law—

(a) **LIMITATIONS.**—No agency shall by order, rule, or other act (1) impose or grant any form of sanction or relief not specified by statute and within the jurisdiction expressly delegated to the agency by law; (2) withhold relief in derogation of private right or statutory entitlement; or (3) impose sanctions inapplicable to the factual situation presented in any case. Sanction or relief includes, but is not limited to, the imposition, withholding, grant, denial, suspension, withdrawal, revocation or annulment, as the case may be, of any form of privilege, license, permission, remedy, benefit, assistance, prohibition, requirement, limitation, penalty, fine, taking or seizure of private property, or assessment of damages, costs, charges, or fees. The exercise, or attempted exercise, of implied powers by any agency to make substantive rules, adjudicate cases, or impose penalties or requirements or withhold benefits is unlawful for any purpose.

(b) **LICENSES.**—In addition to the requirements of subsection (a) of this section, (1) in any case, except financial reorganization, in which an adminis-

trative license (including permit, certificate, approval, registration, charter, membership, or other form of permission) is required by law and due request is made therefor such license shall be deemed granted in full to the extent of the authority of the agency unless the agency shall within not more than sixty days of such application have made its decision or set the matter for formal proceedings required to be conducted pursuant to sections 6 and 7 of this Act; (2) except in cases of clearly demonstrated willfulness or those in which public health, morals, or safety require otherwise, no withdrawal, suspension, revocation, or annulment of any such license shall be lawful unless, prior to the institution of administrative proceedings therefor, any facts or conduct of which the agency has notice and which may warrant such action shall have been called to the attention of the licensee in writing and such person shall have been accorded a reasonable opportunity to demonstrate or achieve compliance with all lawful requirements; (3) no such license with reference to any business, occupation, or activity of a continuing nature shall expire, in any case in which the holder thereof has made due and timely application for a renewal or a new license, until such application shall have been finally determined by the agency concerned.

(c) **PUBLICITY.**—Except as expressly authorized by law, no agency shall, directly or indirectly, issue publicity reflecting adversely upon any person, product, commodity, security, private activity, or enterprise otherwise than by issuance of the full texts of authorized public documents, impartial summaries of the positions of all parties to any controversy, or the issuance of legal notice of public proceedings within its jurisdiction.

JUDICIAL REVIEW

SEC. 9. In connection with any Act, rule, order, process, or proceeding of any agency—

(a) **RIGHT OF REVIEW.**—Any party adversely affected shall be entitled to judicial review of any issue of law in accordance with this section; and every reviewing court shall have plenary authority to render such decision and grant such relief as right and justice may demand in conformity with law and this Act.

(b) **FORM OF ACTION.**—In addition to judicial review incident to proceedings for any form of criminal or civil enforcement of administrative rules, orders, or process, the form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter or, in the absence or inadequacy thereof, any applicable form of legal action including actions for declaratory judgments or writs of injunction or habeas corpus. Any party adversely affected or threatened to be so affected may, through declaratory judgment procedure with or without prior resort to the issuing agency, secure a judicial declaration of rights respecting the validity or application of any administrative act, rule, or order. Except as otherwise provided in connection with special statutory review proceedings, any action for judicial review may be brought against one or more of the following: (1) The agency in its official title at the time of the filing of the proceeding; (2) the officer who is the head of, or one or more of the officers comprising the highest authority in, the agency; or (3) any one or more officers acting in the manner challenged or enforcing or authorized to enforce the rule or order involved.

(c) **COURTS AND VENUE.**—The review guaranteed by this section shall be had upon application to the courts named in statutes especially providing for judicial review or, in the absence or inadequacy thereof, to the district court of the United States (including the District Court of the District of Columbia) in the State, district, and division where the party seeking court review or any one of them resides or has his principal place of business or in case such party is a corporation then where it has its principal place of business or engages in business. Whenever a court shall hold that it is without jurisdiction on the ground that application should have been made to some other court, it shall transmit the pleadings and other papers to a court having jurisdiction which shall, after permitting any necessary amendments, thereupon proceed as in other cases and as though the proceeding had originally been filed therein. In any case in which application for such review is filed, timely amendments shall be permitted to state additional or subsequent facts and seek additional remedies or relief. Any court having jurisdiction of any part of any controversy regarding any administrative action, rule, or order shall have full jurisdiction over all issues in such controversy, with authority to grant all pertinent relief, notwithstanding that

some other court may have jurisdiction of some of the issues or parties. The court review herein provided shall be commenced by the complaining party filing in the office of the clerk of the district court having jurisdiction a written complaint or petition setting forth the grounds of complaint and the relief sought. Service of process shall be had and completed by sending by registered mail a true copy of the complaint or petition to the Attorney General of the United States, or to any Assistant Attorney General of the United States at Washington, District of Columbia, and thereupon the cause, except as herein otherwise provided, shall be proceeded with in conformity with the applicable "Rules of Civil Procedure for the District Courts of the United States."

(d) **REVIEWABLE ACTS.**—Any rule shall be reviewable as provided in this section upon its judicial or administrative application or threatened application to any person, situation, or subject; and, whether or not declaratory or negative in form or substance, any administrative act or order directing action, assessing penalties, prohibiting conduct, affecting rights or property, or denying in whole or in part claimed rights, remedies, privileges, permissions, moneys, or benefits under the Constitution, statutes, or other law of the land, except to the extent that any matter of fact is both substantially in dispute and expressly committed by law to absolute executive discretion, shall be subject to review pursuant to this section; but only final actions, rules, or orders, or those for which there is no other adequate judicial remedy (including the neglect, failure, or refusal of any agency to act upon any application for a rule, order, permission, or the amendment or modification thereof, within the time prescribed by law or within a reasonable time), shall be subject to such review; any preliminary or intermediate act or order not directly reviewable shall be subject to review upon the review of final acts, rules, or orders; and any action, rule, or order shall be final for purposes of the review guaranteed by this section notwithstanding that no petition for rehearing, reconsideration, reopening, or declaratory order has been presented to or ruled upon by the agency involved.

(e) **INTERIM RELIEF.**—Unless the agency of its own motion or on request shall, as hereby authorized, postpone the effective date of any action, rule, or order pending judicial review, every reviewing court, and every court to which a case may be taken on appeal from, or upon application for certiorari or other writ to, a reviewing court, shall have full authority to issue all necessary and appropriate writs, restraining or stay orders, or preliminary or temporary injunctions, mandatory or otherwise, required in the judgment of such court to preserve the status or rights of the parties pending full review and determination as provided in this section; and any such court shall postpone the effective date of any administrative action, rule, or order to the extent necessary to accord the parties a fair opportunity for judicial review of any substantial question of law. Whenever any legal right, privilege, immunity, permission, relief, or benefit expires or is denied, withdrawn, or withheld, in whole or in part, statutes conferring administrative authority in the premises shall be construed, to the extent that such courts so order, to grant or extend the relief requested so far as necessary to preserve the status of the parties or permit just determination and full relief pursuant to this section.

(f) **SCOPE OF REVIEW.**—With reference to any action or the application, threatened application, or terms of any rule or order and notwithstanding the form of the proceeding or whether brought by private parties for review or by public officers or others for enforcement, the reviewing court shall consider and decide so far as necessary to its decision and where raised by the parties, all relevant questions of law arising upon the whole record or such parts thereof as may be cited by any of the parties. Upon such review, the court shall hold unlawful such act or set aside such application, rule, order, or any administrative finding or conclusion made, sanction or requirement imposed, or permission or benefit withheld to the extent that it finds them (1) arbitrary or capricious; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of or without lawful authority, jurisdiction, or limitations or short of statutory right, grant, privilege, or benefit; (4) made or issued without due observance of procedures required by law; (5) unsupported by competent, material, convincing, and substantial evidence, upon the whole record as reviewed by the court, in any case in which the action, rule, or order is required by statute to be taken, made, or issued after administrative hearing; or (6) unwarranted by the facts to the extent that the facts in any case are subject to trial de novo by the reviewing court. The court shall interpret and determine the applicability of any administrative rule or order. The relevant facts shall be tried and determined de novo by the original court of review in all

cases in which administrative adjudications are not required by statute to be made upon administrative hearing, and in any case such court shall try and determine de novo the facts as to the failure of any agency or agent thereof to comply with the provisions of this Act. Except as to compromises or settlements freely entered, no contract or other agreement shall be held to diminish the right or scope of review provided by this section.

(g) APPELLATE REVIEW.—The judgment of any court of review shall be appealable in accordance with existing provisions of law and, in any case in which there is no appeal thereto as of right and probable ground appears that any person has been denied the full benefit of this Act, reviewable by the Supreme Court on writ of certiorari.

(h) OTHER PROVISIONS OF LAW.—All provisions or additional requirements of law applicable to the judicial review of acts, rules, or orders generally or of particular agencies or subject matter, except as the same may be inconsistent with the provisions of this Act, shall remain valid and binding as shall all statutory provisions expressly precluding judicial review of any agency or function or prescribing a broader scope of review than that provided in this Act.

SEPARATION OF FUNCTIONS

SEC. 10. No proceeding, rule, or order subject to the requirements of sections 6 and 7 shall be lawful unless with reference to that type of proceeding the agency involved shall have previously and completely delegated either to one or more of its responsible officers or to one or more of its members all investigative and prosecuting functions (over which the agency or its remaining membership shall thereafter have exercised no control or supervision), and the officers or members so designated shall have had no part in the decision or review of such cases; and, in any agency in which the ultimate authority so subject to sections 6 and 7 is vested in one person, such individual shall wholly delegate such investigating and prosecuting functions to responsible officers. In any complaint or similar paper the agency may appear in name as the moving party; and nothing in this section shall be taken to prevent the supervision, consideration, or acceptance of settlements or adjustments by hearing or deciding officers. Every general delegation and separation of functions required of any agency by this section shall be specifically provided in its rules published pursuant to section 2.

CONSTRUCTION AND EFFECT

SEC. 11. Nothing in this Act shall be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise expressly authorized or required by law, all rules, requirements, limitations, rights, privileges, and precedents relating to evidence or procedure shall apply equally to public agencies and private parties. If any provision of this Act or the application thereof is held invalid, the remainder of this Act or other applications of such provision shall not be affected. Every agency is hereby granted all necessary authority to comply with the requirements of this Act; and no subsequent legislation shall be held to supersede or modify the provisions of this Act unless such legislation shall do so expressly and by reference to the provisions of this Act so affected. This Act shall take effect three months after its approval except that sections 6 and 7 shall take effect six months after such approval. In any agency examiners authorized by law may exercise the functions of commissioners or deputy commissioners provided by subsection (a) of section 6 until one year after the termination of the present hostilities, and no procedural requirement of this Act shall be mandatory as to any administrative proceeding formally initiated or completed prior to the effective date of such requirement.

[H. R. 1203, 79th Cong., 1st sess.]

A BILL To improve the administration of justice by prescribing fair administrative procedure

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Administrative Procedure Act."

DEFINITIONS

SEC. 2. As used in this Act—

(a) **AGENCY.**—"Agency" means each authority of the Government of the United States other than Congress, the courts, or the governments of the possessions, Territories, or the District of Columbia. Except as to the requirements of section 3, there shall be excluded from the operation of this Act (1) functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947, and (2) agencies composed of representatives of the parties or of organizations of the parties to the disputes determined by them.

(b) **PERSON AND PARTY.**—"Person" includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies. "Party" includes any person or agency participating, or properly seeking and entitled to participate, in any agency proceeding or in proceedings for judicial review of any agency action.

(c) **RULE AND RULE MAKING.**—"Rule" means the whole or any part of any agency statement of general applicability designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of any agency. "Rule making" means agency process for the formulation, amendment, or repeal of a rule.

(d) **ORDER AND ADJUDICATION.**—"Order" means the whole or any part of the final disposition or judgment (whether or not affirmative, negative, or declaratory in form) of any agency, and "adjudication" means its process, in a particular instance other than rule making but including licensing.

(e) **LICENSE AND LICENSING.**—"License" includes the whole or part of any agency permit, certificate, approval, registration, charter, membership, or other form of permission. "Licensing" means agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, or conditioning of a license.

(f) **SANCTION AND RELIEF.**—"Sanction" includes, in whole or part by an agency, any (1) prohibition, requirement, limitation, or other condition upon or deprivation of the freedom of any person; (2) withholding of relief; (3) imposition of any form of penalty or fine; (4) destruction, taking, seizure, or withholding of property; (5) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees; or (6) requirement of a license or other compulsory or restrictive act. "Relief" includes, in whole or part by an agency, any (1) grant of money, assistance, authority, exemption, privilege, or remedy; (2) recognition of any claim, right, or exception; or (3) taking of other action beneficial to any person.

(g) **AGENCY ACTION.**—For the purposes of section 10, "agency action" includes the whole or part of every agency rule, order, license, sanction, relief, or the equivalent or denial thereof and including in each case the supporting procedures, findings, conclusions, and reasons required by law.

PUBLIC INFORMATION

SEC. 3. Except to the extent that there is directly involved any military, naval, or diplomatic function of the United States requiring secrecy in the public interest—

(a) **RULES.**—Every agency shall separately state and currently publish (1) descriptions of its internal and field organization; (2) a statement of the general course and method by which each type of matter directly affecting any person or party is channeled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations; and (3) substantive regulations adopted as authorized by law and statements of general policy or interpretations framed by the agency. No person shall in any manner be held liable or prejudiced for compliance with such rules or for failure to resort to organization or procedure not so published.

(b) **RULINGS AND ORDERS.**—Every agency shall publish or make available to public inspection all generally applicable rulings on questions of law and all final opinions or orders in the adjudication of cases except to the extent (1) not utilized as precedents and required by published rule for good cause to be held confidential or (2) relating to the internal management of the agency and not directly affecting public substantive or procedural privileges, rights, or duties.

RULE MAKING

SEC. 4. Except to the extent that there is directly involved any military, naval, or diplomatic function of the United States—

(a) NOTICE.—General notice of proposed substantive rule making shall be published, including (1) a statement of the time, place, and nature of public rule making proceedings; (2) reference to the authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved. Except in cases in which rules are not required by statute to be made after opportunity for agency hearing, this subsection shall not apply to interpretative rules, general statements of policy, rules of agency organization, procedure, or practice, or in any situation in which the agency for good cause finds notice and public procedure thereon impracticable because of unavoidable lack of time or other emergency.

(b) PROCEDURES.—After notice required by this section, the agency shall afford interested parties an opportunity to participate in the rule making through submission of written data, views, or argument with or without opportunity to present the same orally in any manner. After consideration of all relevant matter presented the agency shall, upon adoption or rejection of proposals, publish its reasons and conclusions. To the extent that rules are required by law to be made upon the record of an agency hearing, or after opportunity therefor, the requirements of sections 7 and 8 shall apply in place of the prior provisions of this subsection.

(c) PETITIONS.—To the extent that an agency is authorized to issue rules it shall accord any interested person the right to petition for the issuance, amendment, or rescission of a rule.

ADJUDICATION

SEC. 5. In every case of adjudication required by statute to be determined after opportunity for an agency hearing, except to the extent that there is directly involved any matter subject to a subsequent trial of the law and the facts de novo in any court—

(a) NOTICE.—Persons entitled to notice shall be informed of (1) the time, place, and nature of agency proceedings; (2) the legal authority and jurisdiction under which the proposed proceedings are to be had; and (3) the matters of fact and law in issue. In instances in which private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law.

(b) PROCEDURE.—The agency shall afford all interested parties opportunity for the settlement or adjudication of relevant issues through (1) the submission and consideration of facts, argument, offers of settlement, or proposals of adjustments and (2) to the extent that the parties are unable to so determine any controversy by consent, hearing, and decision upon notice and in conformity with sections 7 and 8. The same officers who preside at the reception of evidence pursuant to section 7 shall make the recommended decision or initial decision pursuant to section 8, except in determining applications for licenses or where such officers become unavailable to the agency.

(c) SEPARATION OF FUNCTIONS.—No officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency shall participate or advise in the decision, recommended decision, or agency review pursuant to section 8 except as witness or counsel in public proceedings. This subsection shall not prevent the agency from supervising the issuance of process or similar papers or from appearing thereon as a party.

(d) DECLARATORY ORDERS.—The agency is authorized, with like effect as in the case of other orders, to issue a declaratory order to terminate a controversy or remove uncertainty.

ANCILLARY MATTERS

SEC. 6. In connection with any proceeding or authority—

(a) APPEARANCE.—Every interested person shall be accorded the right to appear in person or by counsel or other qualified representative before any agency or its responsible officers or employees to secure information or for the prompt negotiation, adjustment, or determination of any issue, request, or controversy. Every person appearing or summoned in any agency proceeding shall be freely accorded the right to be accompanied and advised by counsel. In fixing the times and places for proceedings, regard shall be had for the convenience and necessity of the parties or their representatives.

(b) **INVESTIGATIONS.**—No process, requirement of a report, demand for inspection, or other investigative act or demand shall be enforceable in any manner or for any purpose except (1) as expressly authorized by law, (2) within the jurisdiction of the agency, (3) without denying rights of personal privilege or personal privilege or privacy, and (4) in furtherance of requirements of law enforcement. Every person required to submit data or evidence shall be entitled to retain or procure a copy or transcript thereof.

(c) **SUBPENAS.**—Subpenas authorized by law shall be issued to any party upon request and, as may be required by rules of procedure, upon a statement or showing of general relevance, necessity, or reasonable scope of the evidence sought. Upon any contest of the validity of a subpoena or similar process or demand, the court shall determine all relevant questions of law raised by the parties, including the authority or jurisdiction of the agency, and in any proceeding for enforcement shall enforce (by the issuance of an order requiring the production of the evidence or data under penalty of punishment for contempt in a case of contumacious failure to do so) or refuse to enforce such subpoena accordingly.

(d) **DENIALS.**—Prompt notice shall be given of the denial in whole or part of any application, petition, or other request of any person. Such notice shall be accompanied by a reference to any further agency procedure available to such person and, except to the extent affirming prior denial, a simple statement of grounds.

(e) **EFFECTIVE DATES.**—The required publication or service of any substantive and effective rule (other than one granting exemption or relieving restriction) or final and affirmative order (except the grant or renewal of a license) shall precede for not less than thirty days the effective date thereof except as otherwise authorized by law and provided by the agency upon good cause found.

(f) **PUBLIC RECORDS.**—Matters of official record shall be available to interested persons except personal data, information required by law to be held confidential, or, for good cause found and upon published rule, other specified classes of information.

HEARINGS

SEC. 7. In a hearing pursuant to sections 4 or 5—

(a) **PRESIDING OFFICERS.**—There shall preside at the taking of evidence (1) the agency or (2) one or more subordinate hearing officers designated from members of the body which comprises the agency, State representatives as authorized by statute, or examiners appointed as provided in this Act.

The functions of all presiding officers and of officers participating in decisions in conformity with section 8 shall be conducted in an impartial manner. Except to the extent required for the disposition of ex parte matters as authorized by law, no such officer shall consult or receive evidence or argument from or on behalf of any person or party except upon notice and opportunity for all parties to participate. Upon the filing in good faith of a timely and sufficient affidavit of personal bias, disqualification, or conduct contrary to law of any such officer, the agency or another such officer shall after hearing determine the matter as a part of the record and decision in the case.

Subject to the civil-service and other laws not inconsistent with this Act there shall be appointed for each agency as many qualified and competent examiners as may be necessary for the hearing or decision of cases, who shall perform no other duties, be removable only for good cause after hearing, and receive a fixed salary not subject to change except that the Civil Service Commission shall generally survey and adjust examiners' salaries in order to assure adequacy and uniformity in accordance with the nature and importance of the duties performed. Agencies occasionally or temporarily insufficiently staffed may utilize examiners selected from other agencies by the Civil Service Commission.

(b) **HEARING POWERS.**—Officers presiding at hearings shall have power, in accordance with the published rules of the agency and within its powers, to (1) administer oaths and affirmations, (2) issue subpoenas authorized by law, (3) rule upon offers of proof and receive relevant evidence, (4) take or cause depositions to be taken whenever the ends of justice would be served thereby, (5) regulate the course of the hearing, (6) hold conferences for the settlement or simplification of the issues by consent of the parties, (7) dispose of procedural requests or similar matters, and (8) make decisions or recommended decisions in conformity with section 8.

(c) **EVIDENCE.**—The proponent of a rule or order shall have the burden of proceeding except as statutes otherwise provide. The conduct of every person

or status of any enterprise shall be presumed lawful until the contrary shall have been shown. Every party shall have the right of reasonable cross-examination and to submit rebuttal evidence except that in rule making or determining applications for licenses any agency may, where the interest of any party will not be prejudiced thereby, adopt procedures for the submission of written evidence subject to opportunity for such cross-examination and rebuttal. Any evidence may be received, but no sanction shall be imposed or rule or order be issued except as supported by relevant, reliable, and probative evidence.

(d) **RECORD.**—The transcript of testimony and exhibits, together with all papers and requests relating to the hearing or issues, shall constitute the exclusive record for decision in accordance with section 8 and be made available to the parties. The taking of official notice as to facts beyond the record shall be unlawful unless the parties shall both be notified of the facts so noticed and accorded an opportunity to show the contrary.

DECISIONS

SEC. 8. In cases in which a hearing is required to be conducted in conformity with section 7—

(a) **ACTION BY SUBORDINATES.**—In cases in which the agency has not presided at the reception of the evidence, an officer or officers qualified to preside at hearings pursuant to section 7 shall either initially decide the case or the agency shall require the entire record certified to it for initial decision. Whenever such officers make the initial decision and in the absence of either an appeal to the agency or review upon motion of the agency within time provided by rule, such decision shall without further proceedings then become the decision of the agency. Whenever the agency makes the initial decision without having presided at the reception of the evidence, such officers shall first recommend a decision. Subordinate officers recommending decisions or making initial decisions shall first receive and consider written and oral arguments submitted by the parties.

(b) **SUBMITTALS AND DECISIONS.**—Prior to each recommended decision, initial decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded an opportunity for the submission of, and the officers participating in such decisions shall consider, (1) proposed findings and conclusions, (2) exceptions to decisions or recommended decisions of subordinate officers, and (3) supporting reasons for such exceptions or proposed findings or conclusions. All decisions and recommended decisions shall be a part of the record, stated in writing, served upon the parties, and include a statement of (1) findings of fact, conclusions of law, and reasons therefor upon all relevant issues of fact, law, or agency discretion presented, and (2) the appropriate rule, order, sanction, relief, or denial thereof supported by such findings, conclusions, and reasons.

SANCTIONS AND POWERS

SEC. 9. In the exercise of any power or authority—

(a) **IN GENERAL.**—No sanction shall be imposed or substantive rule or order be issued except within jurisdiction delegated to the agency by law and as specified and authorized by statute.

(b) **LICENSES.**—In any case, except financial reorganizations, in which a license is required by law and application is made therefor such license shall be deemed granted unless the agency shall within not more than sixty days of such application have made its decision or set the matter for proceedings required to be conducted pursuant to sections 7 and 8 of this Act or for other proceedings required by law. Except in cases of clearly demonstrated willfulness or those in which public health, morals, or safety manifestly require otherwise, no withdrawal, suspension, revocation, or annulment of any license shall be lawful unless, prior to the institution of agency proceedings therefor, facts or conduct which may warrant such action shall have been called to the attention of the licensee by the agency in writing and such person shall have been accorded opportunity to demonstrate or achieve compliance with all lawful requirements. In any case in which the holder thereof has made timely application for a renewal or a new license, no license with reference to any activity of a continuing nature shall expire until such application shall have been finally determined by the agency.

(c) **PUBLICITY.**—Except as provided by law, no agency publicity reflecting adversely upon any person or enterprise shall be issued other than the public

release or availability of texts of authorized documents or statements of the positions of the parties to a controversy.

JUDICIAL REVIEW

SEC. 10. Except (1) so far as statutes expressly preclude judicial review, (2) in proceedings for judicial review in any legislative court, or (3) to the extent that agency action is by law committed to agency discretion—

(a) **RIGHT OF REVIEW.**—Any person adversely affected by any agency action shall be entitled to judicial review thereof in accordance with this section.

(b) **FORM AND VENUE OF ACTION.**—The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of injunction or habeas corpus) in any court of competent jurisdiction. Any party adversely affected or threatened to be so affected may, through declaratory judgment procedure after resort to any adequate agency relief provided by rule or statute, secure a judicial declaration of rights respecting the validity or application of any agency action. Agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by statute.

(c) **REVIEWABLE ACTS.**—Every final agency action, or agency action for which there is no other adequate remedy in any court, shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. Any agency action shall be final for the purposes of this section notwithstanding that no petition for review, rehearing, reconsideration, reopening, or declaratory order has been presented to or determined by the agency.

(d) **INTERIM RELIEF.**—Pending judicial review any agency is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to preserve status or rights, afford an opportunity for judicial review of any question of law or prevent irreparable injury, every reviewing court and every court to which a case may be taken on appeal from or upon application for certiorari or other writ to a reviewing court is authorized to issue all necessary and appropriate process to postpone the effective date of any agency action or temporarily grant or extend relief denied or withheld.

(e) **SCOPE OF REVIEW.**—So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) direct or compel agency action unlawfully withheld or unreasonably delayed and (B) hold unlawful and set aside agency action found (1) arbitrary, capricious, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without due observance of procedure required by law; (5) unsupported by competent, material, and substantial evidence upon the whole agency record as reviewed by the court in any case subject to the requirements of sections 7 and 8; or (6) unwarranted by the facts to the extent that the facts in any case are subject to trial de novo by the reviewing court. The relevant facts shall be tried and determined de novo by the original court of review in all cases in which adjudications are not required by statute to be made upon agency hearing.

CONSTRUCTION AND EFFECT

SEC. 11. Nothing in this Act shall be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to any agency or person. If any provision of this Act or the application thereof is held invalid, the remainder of this Act or other applications of such provision shall not be affected. Every agency is granted all authority necessary to comply with the requirements of this Act. No subsequent legislation shall be held to supersede or modify the provisions of this Act unless such legislation shall do so expressly and by reference to the provisions of this Act so affected. This Act shall take effect three months after its approval except that sections 7 and 8 shall

take effect six months after such approval, the requirement of the selection of examiners through civil service shall not become effective until one year after the termination of present hostilities, and no procedural requirement shall be mandatory as to any agency proceeding initiated prior to the effective date of such requirement.

[H. R. 1206, 79th Cong., 1st sess.]

A BILL To prescribe fair standards of administrative procedure, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, divided into titles and sections, according to the following table of contents, may be cited as the "Administrative Procedure Act".

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TITLE I—GENERAL PROVISIONS

SEC. 101. DECLARATION OF GENERAL POLICY.—The exercise of all powers of government through administrative officers and agencies, so far as such exercise affects rights or withholds or confers benefits or privileges, shall be conducted according to established and published procedures and practices which shall assure the adequate protection of such rights, the impartial conferring of authorized benefits or privileges, and the effectuation of the declared policies of Congress, and shall be adapted to the reasonable necessities and differences of legislation and subject matter involved.

SEC. 102. DEFINITIONS.—Except as otherwise expressly stated or required by the context—

(a) "Agency" means each office, board, commission, independent establishment, authority, corporation, department, bureau, division, or other subdivision or unit of the executive branch of the Federal Government, and means the highest or ultimate authority therein.

(b) "Persons" means individuals or organized groups of any character, including partnerships, and other forms of agricultural, labor, business, commercial, or industrial organization or association, as well as Federal, State, or local agencies, subdivisions, municipal corporations, or officers.

(c) "Rules" means rules, regulations, standards, statements of policy, and all other types of statements issued by any agency, of general application and designed to implement, interpret, or make specific the legislation administered by, and the organization and procedure of, any agency; and includes rate making, price fixing, or the fixing of standards.

(d) "Adjudication" means the final disposition by any agency of particular cases (without distinction between licensing and other forms of proceeding).

(e) "Publication," whenever required by this Act and unless otherwise provided, means publication in the Federal Register, except that agencies may adopt such other and additional means of publication as they may deem appropriate and advisable.

SEC. 103. DELEGATION AND DECENTRALIZATION OF AUTHORITY WITHIN AGENCIES.—For the expedition and sound disposition of business, agencies may delegate authority in the following respects and subject to the following conditions, except that each agency shall in every case be responsible for all acts done pursuant to such delegated authority:

(a) CERTAIN TYPES OF DUTIES.—Subject to its own supervision, direction, review, reconsideration, or initial consideration in unusually important cases, every

agency is authorized to delegate to responsible members, officers, employees, committees, or administrative boards all matters of internal management and routine and the informal disposition or issuance of requests, complaints, applications, and other moving papers and matters of preliminary, initial, intermediate, or ancillary formal procedures in connection with the making of rules or adjudications.

(b) **BOARDS AND SINGLE ADMINISTRATORS.**—Every agency, the ultimate authority of which is vested in a board or commission, may delegate, subject to review or reconsideration by the full board or commission, any of its powers or functions to any one or more members of such board or commission, subject in each case to the further provisions of this Act; and where the ultimate authority in any agency is vested in a single individual such individual may (subject to such review or reconsideration as may be provided by rule or law) delegate any powers, duties, or functions to subordinate officers or employees.

(c) **FIELD OFFICES.**—Decentralization of authority and the establishment of field offices shall be encouraged and fostered where, in the judgment of any agency, there is need therefor or the business of the agency and convenience of parties will be facilitated thereby.

(d) **PUBLICATION OF ALL DELEGATIONS.**—Any such general delegation or decentralization, and attendant review procedures, shall, except as to matters of internal management and routine, be specifically provided and reflected in the published rules of the agency concerned.

SEC. 104. APPEARANCE AND REPRESENTATION OF PARTIES.—Any interested person may appear before any agency or the representatives thereof in person or by duly authorized representatives. When so appearing or represented, all reasonable facilities for negotiation, information, adjustment, or formal or informal determination of issues, questions, problems, or cases shall be afforded all such persons or their representatives. Every person appearing or summoned individually in any administrative proceeding shall be freely accorded the right to be accompanied and advised by counsel.

SEC. 105. ATTORNEY AND AGENTS.—In order to simplify the requirements for practice before agencies, the following and no other powers or requirements may be exercised or prescribed:

(a) **SUSPENSION OR DEBARMENT.**—Whether or not any agency maintains a roll of practitioners, it may, upon hearing and a finding of good cause therefor, preclude any person from practicing before it, subject to judicial review as to the reasonableness, in law or upon the facts, of such suspension or debarment upon any available statutory procedure or, in the absence thereof, upon application for an injunction.

(b) **ADMISSIONS TO PRACTICE.**—Requirements for the admission of attorneys or agents to practice, and the maintenance of formal registers of attorneys or agents, shall be omitted whenever practicable. The Office of Administrative Procedure may, subject to the conditions of this section, establish and maintain a central method for the registration or admission of attorneys and others to practice before several agencies.

(c) **ATTORNEYS.**—Where admissions to practice are deemed necessary by any agency, attorneys in good standing admitted to practice in the highest court of any State or Territory, or in any Federal court, shall, upon their written representation to that effect, be admitted to practice before such agency, except that the Patent Office may require of such attorneys such evidence of technical proficiency as may be reasonably necessary.

(d) **FORMER EMPLOYEES.**—Former employees of any agency may, subject to the conditions of this section, practice before such agency after the lapse of two years from the date of termination of their employment by such agency. Prior to the expiration of such period, such former employees, whether attorneys as defined in subsection (c) hereof or not, may be permitted to practice before the agency upon such additional restrictions or conditions as may be deemed necessary by the agency.

(e) **OTHER PERSONS.**—Other persons may be admitted to practice before any agency upon such reasonable regulations and requirements as such agency may find necessary.

SEC. 106. INVESTIGATIONS.—All investigations shall be conducted in such a manner as to disturb and disrupt personal privacy or private occupation or enterprise in the least degree compatible with adequate law enforcement. Required reports shall be simplified so far as possible. Compulsory process or inspections shall not be issued or demanded except when in the judgment of an agency there is need therefor, nor shall persons be requested to consent to such process or in-

spections in excess of statutory or constitutional limits. In order to avoid the necessity for formal process, where deemed practicable agencies may informally request and receive sworn statements on matters within their jurisdiction with the same authority and effect as though requested, submitted, or received at authorized formal hearings. The investigative powers or means of any agency shall be exercised only by the authorized representatives of such agency and for its authorized purposes, and shall not be exercised for the effectuation of purposes, powers, or policies of any other person or agency unless such exercise is expressly authorized by statute.

SEC. 107. SUBPENAS.—Administrative subpoenas authorized by statute shall be issued only upon request and a reasonable showing of the grounds, necessity, and reasonable scope thereof (but such showing of facts or evidence sought shall not be made available to agency prosecutors or investigators in the case), and shall be issued to private parties as freely as to representatives of the agency concerned.

SEC. 108. PUBLICITY.—Matters of record shall be made available to all interested persons, except personal data or material which the agency, for good cause and upon statutory authorization, find should be treated as confidential and except that any agency, for good cause found, may by published rule preserve as confidential specified classes of information. Agencies may make available special information upon request at cost or without charge. In all contested proceedings, agency publicity shall be withheld during preliminary or investigative phases of adjudication, except that any agency may publicize and give notice of general investigations or public inquiries. When formal proceedings are instituted, publicity and releases may be issued by an agency or its officers or employees only upon equality of treatment of representatives of the press and other interested parties and shall contain only the full text of impartial summaries of documents of public record; and such summaries shall, so far as deemed practicable, cover the public documents or positions of all parties to the proceeding or matter involved.

SEC. 109. PROVISION FOR THE CONTINUOUS IMPROVEMENT OF ADMINISTRATIVE PROCEDURE.—In order to assure the continuous and proper operation of the provisions of this Act, to make further studies and recommendations, and to perform the special functions hereinafter provided:

(a) **OFFICE OF FEDERAL ADMINISTRATIVE PROCEDURE.**—There shall be at the seat of government an independent establishment to be known as the Office of Federal Administrative Procedure (hereinafter referred to as the Office), with a Director learned in the law or qualified by experience, who shall be appointed by the President, by and with the advice and consent of the Senate, at a salary of \$10,000 per annum, and who shall, unless removed by the President for cause, hold office for the term of seven years or until a successor shall have been appointed. The Office shall be governed by a board composed of (1) the Director, (2) one of the associate justices of the United States Court of Appeals for the District of Columbia designated for that purpose by the chief justice of that court, and (3) the Director of the Administrative Office of the United States Courts. The latter two members shall serve ex officio and without further compensation.

(b) **PERSONNEL FUNCTIONS AND STAFF.**—The board (1) shall perform such functions respecting hearing commissioners as are provided in title III hereof; (2) may appoint, without regard for the provisions of the civil-service laws, and executive secretary and such attorneys, investigators, and experts as are deemed necessary to perform the functions and duties vested in the Office and fix their compensation according to the Classification Act of 1923, as amended; and (3) may appoint such other employees, with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary. During his term of office or employment, neither the Director nor any officer or employee of the Office shall engage directly or indirectly in practice before, or have private professional relationship with, any of the agencies or courts of the United States. The Office may, with the consent of any agency, utilize the personnel or facilities of the agency in the performance of its duties, and may utilize any other uncompensated services or facilities.

(c) **OTHER DUTIES.**—In order to carry out the policy of this Act, the Office shall (1) conduct inquiries into the practices and procedures of the several agencies to secure the just and efficient discharge of their public duties; (2) receive and respond promptly to all reasonable inquiries respecting administrative functions, procedures, or practices; (3) investigate complaints; (4) make recommenda-

tions to Congress and the agencies to secure the elimination of complaints and the adoption of just, efficient, and uniform methods of procedure; and (5) report annually on or before the 15th day of January to the President and Congress respecting the work of the Office during the year last past, the operation of this Act, and the legislative needs of the Federal administrative establishment in furtherance of the policies of this Act. The report shall also contain the names and qualifications of all hearing commissioners appointed since the last report, and the circumstances regarding any proceedings had for the removal of hearing commissioners.

(d) **SPECIAL INQUIRIES.**—The Office shall, from time to time, make studies and reports (1) to indicate in what respects the provisions of this Act may be amplified and extended; (2) to regularize the rules of pleading and evidence; and (3) to provide model or recommended procedures respecting investigations, licensing, tests and inspections, reparation cases, rate making and other special forms of rule making, claims against the United States, loans by public agencies, the distribution of benefits and gratuities, and other special types of administrative processes.

(e) **AGENCY LIAISON OFFICERS AND ADVISORY COMMITTEES.**—Upon the request of the Office, each agency shall name one of its members, officers, or employees to serve as liaison officer with the Office; and each agency shall promptly furnish the Office with all information and proper assistance requested. The Office shall organize and name advisory committees from the public service, the bar, and the public to aid it in the performance of any of its functions.

SEC. 110. EFFECT AND ENFORCEMENT.—The provisions of this Act shall serve as guides, limitations, or authority for the persons affected by administrative powers, for administrators in the exercise of those powers, and for the courts in reviewing the exercise of such powers. Any member, officer, or employee of an agency who violates the mandatory provisions of this Act shall, other laws to the contrary notwithstanding, be subject to disciplinary action, demotion, suspension, or discharge from the public service; and each agency head or member of the board or commission comprising the ultimate authority of any agency shall take such disciplinary measures as are appropriate to the case except that an honest mistake shall not be penalized.

SEC. 111. SUSPENSION OF PARTICULAR APPLICATIONS OF CODE.—Whenever the President finds, upon the application and reasoned recommendations of any agency and of the Office of Federal Administrative Procedure, that the application of any particular mandatory section, subsection, or provision of this Act to any particular part of any function or operation of such agency is unworkable or impracticable he may, upon such terms and conditions as he may provide to assure some other form of fair procedure as nearly as may be in accordance with the policies declared by this Act, suspend the operation of such application of any of the provisions of this Act by Executive order, which shall be published before the effective date of such suspension. Thereupon the operation of this Act as to such application shall be of no force or effect until thirty days subsequent to the termination of the next succeeding session of Congress, unless meanwhile (a) the President shall by published order have rescinded his order of suspension, or (b) Congress shall have amended this Act to permit such variation or to provide some substitute procedure (in which case such variation or substituted procedure shall prevail), or (c) Congress shall, by legislative act or concurrent resolution, have reaffirmed the application of this Act (in which case the suspension order of the President shall be of no further force or effect). If Congress shall take no action during such period, the suspension order of the President shall be of no further force or effect, except that further suspension orders may be issued upon like conditions. All such suspension orders, together with the supporting reasons and recommendations of the agency affected and of the Office of Federal Administrative Procedure (which shall have been also published and made available to the public at the time of the issuance of the Presidential order of suspension), shall be transmitted to Congress not more than ten days after the issuance of the order of suspension by the President or, if Congress is not then in session, not more than ten days after the commencement of the next session of Congress; and orders rescinding such suspension orders shall be similarly published and transmitted to Congress.

SEC. 112. SEPARABILITY OF PROVISIONS.—If any provision of this Act, or the application thereof, to any agency, person, public duty, procedure, or circumstances is held invalid, the remainder of the Act and the application of such provision to others shall not be affected thereby.

SEC. 13. EFFECTIVE DATE OF ACT.—This act shall take effect twenty days after its approval, except that subsections 308 (b), (c), (m) (1), (m) (2), (n), and (o) shall take effect six months thereafter unless prior thereto an agency shall complete its necessary adjustments and publish by rule its acceptance of the hearing commissioner system therein provided.

TITLE II—ADMINISTRATIVE RULES AND REGULATIONS

SEC. 200. DECLARATION OF POLICY.—It is the declared policy of Congress that administrative agencies (a) shall issue rules, regulations, or statements of the types specified in this title in order that interested persons may have all possible information, both specific and general, as to administrative organization, policy, law, procedure, and practice; and (b) shall formulate such rules, regulations, or statements through the utilization of procedures authorized by this title and designed to extend the legislative process by securing the participation of interested parties, and shall make complete, adequate, and timely amendments, additions, and revisions through the same procedures. However, nothing in this title shall be deemed to require agencies to formulate in advance all rules necessary to cover all situations or every contingency which may arise under the statutes administered.

SEC. 201. EXCEPTIONS.—Whenever expressly found by an agency to be contrary to the public interest, the provisions of this title, in whole or part, shall not apply to (a) the conduct of military, naval, or national defense functions, or the selection or procurement of men or materials for the armed forces of the United States; or (b) the conduct of diplomatic functions, foreign affairs, or activities beyond the territorial limits of the United States affecting the relation of the United States to other nations. Such findings shall be published unless, in any given case, the President shall in writing direct the withholding of such publication.

SEC. 202. REQUIRED TYPES OF RULES.—Every agency is authorized and directed to formulate, issue, and publish from time to time, so far as applicable or appropriate in view of the legislation and subject matter with which the agency deals, rules in the following forms or containing (but not necessarily limited to) the following types of information:

(a) AGENCY ORGANIZATION.—Every agency shall promptly state in the form of rules, and keep current such statements of, its internal organization, specifying (1) its principal offices, officers, and types of personnel other than clerical or custodial, (2) its subdivisions, (3) the places of business or operation, duties, functions, and general authority or jurisdiction of each of the foregoing, and (4) the same information as to its field staff and organization.

(b) STATEMENTS OF POLICY.—Where an agency, acting under general or specific legislation, has formulated or acts upon general policies not clearly specified in legislation, so far as practicable such policies shall be formulated, stated, published, and revised in the same manner as other rules.

(c) RULES OF SUBSTANCE.—Each agency shall, as rapidly as deemed practicable, issue all rules specifically authorized or required by statute in order to implement, complete, or make operative particular legislative provisions, except that an agency may withhold such rule making by publishing an explanatory rule respecting each such situation.

(d) INTERPRETATIVE RULES.—Each agency shall issue, in the form of rules, all necessary or appropriate rules interpreting the statutory provisions under which it operates, and such rules shall reflect the interpretations currently relied upon by such agency and not otherwise published in the form of rules.

(e) RULES OF PRACTICE AND PROCEDURE.—All regularly available procedures, formal or informal, shall be formulated and promulgated as rules of practice and procedure. The description of such procedures shall be such as to disclose, so far as practicable, the general procedural stages, steps, and alternatives for all types of jurisdiction, functions, or cases of each agency.

(f) FORMS.—Each agency may prescribe the form and content of all papers, reports, applications, certificates, requests, complaints, responses, pleadings, briefs, or other documents.

(g) INSTRUCTIONS.—Every agency, the procedures of which in whole or part involve action upon extended or detailed statements, reports, or examinations, shall make and issue adequate instructions for such reports or examinations in order that persons affected may be clearly advised of the scope and requirements thereof.

SEC. 203. FORM, CONTENT, AND PUBLICATION OF RULES.—The following directions shall be observed in connection with all rules:

(a) REPETITION OF LEGISLATION.—Rules shall not merely repeat legislative provisions, except that, where restatement of the text of legislation is deemed advisable, legislative provisions shall be stated in italics or quotations marks and labeled to indicate their source.

(b) TO BE COMPLETE AD CURRET.—All rules shall be kept current at all times, and care shall be exercised to assure that rules shall be complete but not prolix or repetitious.

(c) PUBLICATION OF RULES.—No agency shall act upon unpublished rules, instructions, or statements of policy, except that staff instructions in special or individual cases or general instructions respecting matters of internal office management or routine need not be published and shall not be included in rules. All other rules shall be published in the Federal Register, and in addition agencies shall publish their rules (as reprints of the Federal Register or Code of Federal Regulations, or otherwise) from time to time (with or without the legislation under which they operate) in pamphlet form. Rules may be so published in the Federal Register as soon as practicable after their effective date where the agency concerned, for good cause, has found it necessary to make such rules effective before such publication and includes in its rules a statement regarding the publication of such special classes of rules.

(d) ORGANIZATION, FORM, AND NUMBERING.—All rules of an agency may be contained in a single set, but shall be separately stated as to (1) agency organization, (2) practice and procedure, and (3) substance. Rules may be otherwise organized as to form and numbering, provided that they are organized in such a manner as, in the judgment of the agency, will best reflect the particular subjects of administration and procedure.

SEC. 204. RESCISSION OF RULES.—After agency withdrawal or rescission, or judicial invalidation, of any rule, no person shall be held to incur any liability or penalty for conduct in accordance with such rule until after publication of its withdrawal for not less than thirty days, except that where the agency makes and publishes a finding of emergency such rescission may take effect upon publication or at any time thereafter specified by the agency. Rules may be modified in particular cases, either with the consent of persons affected or, where no rights are abridged or serious disadvantage imposed thereby, upon reasonable adequate notice to such persons.

SEC. 205. FORMULATION OF RULES.—Each agency shall both (1) formulate and publish a regularized procedure or procedures for the making of rules, subject to change for emergencies or special situations, and (2) designate, by rule, one or more of its existing or specially created units, committees, boards, officers, or employees, to receive suggestions and facilitate, correlate, revise, and expedite the making of rules, subject to the approval and supervision of the agency.

SEC. 206. INVESTIGATIONS PRELIMINARY TO RULE-MAKING.—Prior to the making of rules or the utilization of any of the procedures provided by this title, each agency shall conduct such preliminary nonpublic investigations as will enable it to formulate issues or proposed, tentative, or final rules.

SEC. 207. DEFERRED EFFECTIVE DATE OF PROPOSED RULES.—Wherever practicable and useful in the judgment of the agency, tentative rules or proposed amendments or rescissions shall be issued sufficiently in advance of their effective date to permit comment, the submission and consideration of oral or written criticism or argument, and revision or suspension prior to the designated effective date.

SEC. 208. NOTICE OF RULE MAKING.—General notice of proposed rule making shall be published wherever practicable, together with an invitation to interested parties to make written suggestions or to participate in rule-making procedures. Special notice to particular persons, representative persons, or groups or associations may be given. In either case, notice of the issues or scope of the proposed rules shall be given with as much particularity and definiteness as deemed practicable; and, where deemed practicable by the agency, the submission, or notice of availability upon request, of proposed or tentative rules shall be made as part of such notice. Where hearings or conferences are to be held, parties desiring to participate may be required to give notice to the agency of their desire to do so and of the materials they wish to present or issues they wish to discuss. The submission of reports or summaries of hearings, investigations, or conferences, or the publication of tentative drafts of rules, may be utilized as methods of notice of issues in rule making.

SEC. 209. PUBLIC RULE-MAKING PROCEDURES.—Without limiting the adoption of any other procedures, agencies are authorized to utilize in situations deemed appropriate by them any one or more of the following types of public rule-making procedures:

(a) SUBMISSION AND RECEPTION OF WRITTEN VIEWS.—Provision for the submission and consideration of written views shall be made in all cases of announced rule making, unless the agency concerned determines such a course to be impracticable.

(b) CONSULTATIONS AND CONFERENCES.—So far as practicable, preliminary to the promulgation of rules, agencies may provide for conferences and consultations with persons, or representative persons, likely to be affected by the proposed rules. In so doing, advisory committees or any other suitable means may be used. All interested parties, so far as deemed practicable, shall be invited to submit written suggestions or participate orally in such consultations or conferences.

(c) INFORMAL HEARINGS.—Where parties are numerous, or where the protection of the public interest requires, or where consultation and conference procedure is otherwise not adapted to the subject matter, public hearings may be held for the informal presentation of views or argument with reference to proposed rules. Parties unable to attend, because of time or expense or for other reasons, shall be permitted to submit written statements. Experts or employees of the agency may open such hearings with a presentation or summary of the results of preliminary investigation or consideration by the agency. The agency may designate any proper and responsible person as a presiding officer at such hearings, whose functions shall be the keeping of order, the elicitation of full data, and the restriction of oral statements, arguments, or testimony to reasonable limits. Agency counsel may be designated to aid in questioning where such procedure is deemed helpful to the agency. Records of such hearings may be kept, of which, where necessary or convenient, summaries may be made for the consideration of the agency or other persons to whom the agency desires to refer for further comment or consultation.

(d) FORMAL HEARING.—Where and to the extent that, in the judgment of the agency, issues involve sharply controversial matters best treated through formal procedures, or where legislation requires the holding of formal hearings prior to the making of rules, formal rule-making hearings shall be held. In such hearings, both oral testimony and sworn statements may be received, with adequate opportunity for cross-examination or rebuttal: *Provided, however,* That presiding officers, designated by the agency, shall limit statements and cross-examination to matters which will be helpful to the agency in reaching an informed judgment. The admission and exclusion of evidence shall be designed to secure for the agency all pertinent information, but repetition and the compilation of unduly lengthy records shall be avoided. Specific proposed findings, intermediate recommendations, or reports shall be made and issued upon which argument before the agency shall be held, but these may be eliminated where tentative or proposed rules are made available by published notice prior to argument. Agencies may adopt in such hearing procedure such of the provisions of title III hereof as they deem desirable.

(e) EMERGENCIES, CORRECTIONS, AND AMENDMENTS.—The foregoing procedural directions shall be dispensed with in emergencies, as well as in making minor and noncontroversial amendments.

(f) INITIAL PROMULGATION OF PRESENT UNPUBLISHED AGENCY ORGANIZATION AND PROCEDURES.—The promulgation of the organization and procedures of each agency or of a revision thereof, shall be done promptly upon the approval of this Act, and, except to the extent deemed necessary or advisable by the agencies, shall not be attended by any of the procedures specified by this section.

(g) EXISTING STATUTORY REQUIREMENTS.—The foregoing procedures shall not supersede or be held to repeal existing statutory requirements expressed specifically in legislation.

SEC. 210. RIGHT OF PETITION.—Any interested person shall have the right to request any agency to issue, amend, or rescind rules. Each agency shall provide, in accordance with the provisions of this title, the form, content, and procedure for the submission, reception, consideration, and disposition of such requests. Reports shall be made to Congress on the nature and disposition of such requests, as hereinafter provided in this title.

SEC. 211. JUDICIAL REVIEW.—Except as otherwise specifically required or precluded by law, any rule may be judicially reviewed upon contest of its application.

to particular persons or subjects, or upon proper application for declaratory judgment, as follows:

(a) **DECLARATORY JUDGMENTS.**—Declaratory judgments shall be rendered under this section only where the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the constitutional or statutory rights, privileges, immunities, or benefits of any person. Such judgments may be rendered without prior resort to the agency by the person seeking relief: *Provided, however,* That controversies as to the applicability of any rule to any person, property, or state of facts shall be determined by the declaratory ruling procedure provided in title III hereof.

(b) **SCOPE OF REVIEW.**—Upon such review, whether upon application for declaratory judgment or upon contest of the application of the rule to any person, property, or state of facts, the questions for determination by the court, so far as necessary to a decision, shall include (1) all matters of constitutional right, power, privilege, or immunity; (2) the statutory authority of discretion of the agency; and (3) the observance of all procedures required by law. Where, upon application for declaratory judgment, contest develops as to the facts or the applicability of the rule to any person, property, or state of facts, the court shall refer the case to the agency involved for a declaratory ruling as provided in title III hereof and shall terminate the proceeding for a declaratory judgment.

(c) **OTHER PROCEDURAL PROVISIONS.**—In all other respects, the provision of title III hereof regarding the judicial review of adjudications shall apply in any case.

SEC. 212. RULINGS.—Rulings in specific cases shall not, as a method or matter of general practice, be utilized to serve the functions of rules. Where rulings enunciate general rules or principles not otherwise published as rules or statutes, they shall be followed by the prompt formulation and promulgation of rules or statements of policy. Except those dealing with matters of management, budgets, or routine of no proper interest to persons having business before the agency, all rulings shall be made available to any person and specially published or reproduced in leaflet or bound form and, unless so published and made available, shall not be utilized, cited, or have any validity, force, or effect as to third parties.

SEC. 213. ANNUAL REPORT TO CONGRESS ON RULES.—Annually, in its report to Congress or otherwise, each agency shall transmit to Congress all rules promulgated during the preceding year, together with explanatory material relating to their substance and the procedure utilized in their formulation and promulgation. Such report shall also contain a statement concerning the nature and disposition of petitions received requesting the formulation, amendment, or repeal of rules as provided in this title.

TITLE III—ADMINISTRATIVE ADJUDICATIONS

SEC. 300. DECLARATION OF POLICY.—It is the declared policy of Congress that administrative adjudications shall be attended by procedures which assure to every person affected: (a) Specific notice of issues and procedures at every stage of proceeding; (b) an adequate opportunity to present evidence and argument and to hear or see argument or evidence presented against him, including an opportunity to present such evidence and argument to any representative of any agency actually engaged in the formulation of decision; (c) prompt and speedy decision by impartial officers; (d) the full relief authorized by law where such relief is requested or, where sanctions are imposed, no greater or different penalties than those authorized by statute; and (e) an opportunity for judicial review as hereinafter provided.

SEC. 301. EXCEPTION.—Nothing contained in this title shall apply to or effect any matter concerning or relating to—

(a) administrative decisions, determinations, or orders subject to, or made and issued upon, trial de novo by a separate and independent administrative tribunal or in any court;

(b) diplomatic functions or foreign affairs, except in cases where particular citizens or residents of the United States are parties;

(c) the conduct of the military or naval establishments, the selection or procurement of men or materials for the armed forces of the United States, and national-defense functions declared and published by the President during any period of national emergency.

(d) the selection, appointment, promotion, transfer, dismissal, or discipline of an employee or officer of any agency;

(e) arbitration, mediation, or adjustment (as distinguished from adjudication) in the field of labor relations and other fields;

- (f) fiscal and monetary operations of the Treasury, including foreign funds control;
- (g) functions concerned with public works, relief, lending, or spending;
- (r) the procurement or disposition of public (or publicly held) property;
- or (i) the admission or control of aliens.

Provided, however, That, notwithstanding such exceptions other than those stated in (a) hereof, the provisions of this title shall apply to all proceedings in which the statutory rights, duties, or other legal relations of any person are required by law to be determined only after opportunity for hearing and, if a hearing be held, only upon the basis of a record made in the course of such hearing; and, as to all adjudicatory proceedings excepted from the operation of this title, its provisions, except those for judicial review and the appointment of hearing commissioners, shall be deemed advisory and may be adopted in whole or in part by rule of any such agency.

SEC. 302. EXPEDITION OF ADMINISTRATIVE ADJUDICATIONS.—Except upon the request or consent of the parties or where the public or private interests will not suffer unreasonably by delay, it is the declared policy of Congress that administrative adjudications shall be made speedily, and matters not susceptible of prompt informal disposition shall be set for formal hearing forthwith, and promptly heard, argued, and decided. In fixing the times and places for formal or informal proceedings, due regard shall always be had for the convenience and necessity of the parties involved or their representatives.

SEC. 303. DEFAULTS AND INFORMAL DISPOSITIONS.—Any agency is authorized to make informal disposition of adjudications or controversies within its jurisdiction, in whole or in part, and may make, issue, or enter (1) stipulations, agreed settlements, or consent orders; or (2) default judgments or orders where parties fail to file required answers or other required responsive pleadings or fail to appear or participate in scheduled formal proceedings or, upon request by the agency, fail to give notice of intention to do so. Whether or not facts are found, stipulated, or admitted, all such dispositions shall have the same force and effect as orders or determinations after formal proceedings. Formal procedures or hearings shall not be required or held in uncontested cases or where parties consent to proceed otherwise, unless in the judgment of the agency (1) the great number of parties or issues makes impossible or inadequate informal or default disposition or (2) the unusual nature and importance of the controversy require formal procedure in the protection of the public interest.

SEC. 304. DECLARATORY RULINGS.—Upon the petition of any interested person, every agency shall, in accordance with the provisions of this title, make and issue declaratory rulings when necessary to terminate a controversy or to remove a substantial uncertainty as to the application of administrative statutory authority or rules, with the same effect, and subject to the same administrative or judicial review or reconsideration as in the case of all other authorized adjudications of the agency. Such rulings shall not bind, or affect the rights of, persons or property not parties to, or named as the subject of, such proceedings to any greater extent than other types of authorized adjudications made pursuant to this title.

SEC. 305. NOTICE IN FORMAL AND INFORMAL PROCEEDINGS.—All notices, complaints, orders to show cause, moving papers, or amendments thereto issued by any agency shall specify with particularity the matters or things in issue, and shall not include charges or implied charges or requirements phrased generally or in the words of the statute under which the agency is proceeding: *Provided,* That an agency may identify, and quote or use the words of, any statute in the preliminary recitals to any notice and shall specify the statutory jurisdiction or other authority under which it is acting. Notices of the denial of applications, petitions, or other requests of persons shall be made and served upon the persons involved, shall specify with particularity the reasons and grounds for denial, and shall, so far as deemed practical, contain complete and specific suggestions or directions as to further administrative procedures or alternatives available to the persons involved.

SEC. 306. RESPONSIVE PLEADINGS OR NOTICES.—In lieu of or in addition to answers and other responsive pleadings, agencies are authorized to require notice by the parties of a desire to be heard and intention to appear.

SEC. 307. REQUIREMENT OF FORMAL PROCEDURES.—In all cases where informal procedures do not result in consent dispositions of matters initiated by an agency or pending upon applications for licenses, permits, claims, or permissions, formal adjudicatory procedure for the hearing and decision of cases shall be provided in accordance with section 308 hereof except that (a) where decisions rest upon

inspections or tests, upon demand reinspections or retests by superior officers shall be provided where other types of formal procedures are not provided; (b) where time or other factors indispensably require (and statutes authorize) summary preliminary, intermediate, or final action and disposition of matters, responsible officers or agents shall be made available for conferences and the prompt adjustment or other fair disposition of such matters, subject to prompt and fair informal review by the agency itself upon the request or protest of persons involved; (c) emergency action, where authorized and provided by law, shall be subject, so far as possible, to prompt reconsideration by the agency, with fair opportunity to present evidence and argument; and (d) by consent of the parties the application of any of the provisions of this title may be modified respecting any particular case.

SEC. 308. FORMAL HEARINGS AND DECISIONS.—In order to simplify, make uniform, and assure to every person a full and fair hearing and decision in every instance of administrative adjudication, the following formal procedures shall be observed:

(a) SEGREGATION OF PROSECUTING FUNCTIONS IN FORMAL PROCEEDINGS.—In all cases where agencies or their members or representatives make formal adjudications there shall be a complete segregation of prosecuting from hearing and deciding functions. Those heads, members, officers, employees, or representatives of any agency engaged in presiding at hearings or formulating findings and decisions in the course of formal proceedings shall not consult or advise with agency, counsel, investigators, representatives, or employees except upon notice to all affected parties and in open hearing or otherwise as provided herein: *Provided*, That the head, or members of a board which comprises the ultimate authority, of any agency may, so far as deemed desirable or necessary by the agency, in any case both hear or decide and (a) supervise or authorize the institution and general conduct of proceedings or the issuance of preliminary or intermediate orders or process, or (b) supervise the consideration, or reject offers, of settlement or consent disposition prior to or after the institution of formal proceedings; and any agency may, in its own name or by subordinate officers or employees, formally appear upon papers, pleadings, and decisions both as a moving party and as the deciding authority in any cause within its jurisdiction. Nothing herein shall be taken to preclude agency experts and other personnel from appearing at hearings and submitting opinions or evidence in the same manner as other witnesses.

(b) HEARING AND DECIDING, OR PRESIDING, OFFICERS.—Whenever the head of an agency or one or more members of the board or body which comprises the highest authority of the agency or a State representative authorized by statute to do so does not preside at the taking of evidence, all cases shall be heard and decided by a "hearing commissioner" as hereinafter provided. All other cases shall be heard and decided in accordance with this title by the head of an agency, or the board or body which constitutes the ultimate authority of the agency, or one or more members thereof; or an authorized representative of one of the States. All such hearing and deciding officers are hereinafter designated as "presiding officers", whose functions shall be judicial in nature and whose conduct shall be governed by the accepted canons of judicial ethics. As a matter of policy and general practice, presiding officers shall also render decisions in the cases they have heard. Where the head of an agency or the entire membership of the ultimate board or authority itself decides a case in the first instance as herein provided, the provisions hereinafter made for appeal to the agency shall not apply.

(c) HEARING COMMISSIONERS.—Subject to the provisions of this Act and other provisions of law not inconsistent herewith, there shall be appointed for each agency as many duly qualified hearing commissioners as may from time to time be deemed necessary for the hearing and decision of cases, and who shall have or perform no other duties or functions.

(1) Such appointments may be made upon nomination by the agency and without regard for the provisions of the civil-service laws or other existing laws applicable to the employment and compensation of officers and employees of the United States, by the Office of Federal Administrative Procedure (hereinafter referred to as the Office) after its consideration and approval of the training, experience, character, and temperament of such nominees to discharge the responsibilities of the office of hearing commissioner. The Office is authorized to make such investigations as may be necessary in order to pass upon the qualifications of nominees. Reappointments may be made by the Office, without the recommendation or intercession of the agency concerned, in all cases where

hearing commissioners have rendered creditable service. In the nomination, approval, disapproval, appointment, or reappointment of hearing commissioners no political test or qualification shall be permitted or given consideration, but all nominations and approvals shall be made solely upon the basis of merit and efficiency.

(2) Hearing commissioners shall receive an annual salary of not less than \$3,600 or more than \$9,000, to be paid from the available funds of the agency for which they are appointed or to which they are assigned. The Office shall fix, and may adjust from time to time, the appropriate salary scale for the hearing commissioners of each agency or type of functions or cases involved; and except as the salaries of hearing commissioners in office may be affected by such general adjustments in salary scales or appointment of such commissioners to different grades, the salary of any hearing commissioner shall not be increased or diminished during his term of office otherwise than by operation of an Act of Congress.

(3) Each hearing commissioner shall hold office for a period of twelve years and shall be removable only (a) upon certification by the agency executive that lack of official business or insufficiency of available appropriations renders necessary the termination of the hearing commissioner's appointment, and the approval of the Office; or (b) upon the statement of charges by the agency that he has been guilty of malfeasance in office or has been neglectful or inefficient in the performance of duty; or (c) upon the statement of like charges by the Attorney General of the United States, which the Attorney General is authorized to make in his discretion after investigation of any complaint against a hearing commissioner made to the Attorney General by a person other than an agency. If the removal of a hearing commissioner is made after certification and approval as provided in (3) (a) hereof, the hearing commissioner so removed shall be placed upon an eligible list for reappointment in the event that circumstances warrant, and no new appointments of hearing commissioners shall be made in the agency of which he has been a part except by the Office from persons whose names appear on such list. A hearing commissioner upon whom charges under (3) (b) or (3) (c) hereof have been served may within five days thereafter demand a hearing upon the charges, to be held before the members of the Office or, if the Office so directs, before a trial board consisting of the Director and two other members designated by the Office. The manner by which requests for such hearings shall be made, the time and place at which such hearings shall be had, and the hearing procedure shall be prescribed by the Office. A hearing commissioner against whom such charges have been made shall stand suspended from office, but his salary shall continue for five days or until service of findings upon him after the hearing herein provided. The decision of the Office or the trial board, as the case may be, shall be accompanied by findings based upon the record of the hearing, and shall be final and unreviewable by any other officer or in any other forum. In the event the Office or the trial board, as the case may be, concludes that good cause for removal of a hearing commissioner has been shown, the hearing commissioner shall be deemed to have been removed from office as of the date on which findings so sustained are served upon him; but if it be concluded that such cause for removal of a hearing commissioner has not been established, the suspension of the hearing commissioner under charges shall terminate forthwith, and the hearing commissioner shall be at once restored to active status.

(4) In case of emergencies, the temporary incapacity of available hearing commissioners, temporary congestion of dockets, or where cases arise so infrequently that permanent hearing commissioners are unnecessary or where the Office for good cause authorizes the appointment of provisional hearing commissioners, hearing commissioners may be appointed as herein provided for a period not to exceed one year, which may be once renewed with the consent of the Office. At the conclusion of such provisional period, such hearing commissioners shall be regularly nominated, approved, and appointed, or in the alternative, shall be completely and permanently relieved of all assignments calling for the fulfillment of tasks appropriately performed by any hearing commissioner in the agency.

(5) Upon such terms and conditions as it may deem proper, the Office may authorize the temporary, intermittent, or occasional utilization of services of the hearing commissioners of one agency by another agency where the respective agencies request and consent to such service.

(6) The agency itself, or through a chief hearing commissioner whom it designates from among its duly appointed hearing commissioners, or any other designated officer or employee, shall assign cases to such commissioners, supervise the agency docket, and take all other similar appropriate and necessary steps to facilitate and expedite the hearing and decision of cases.

(7) Examiners presently in office with civil-service status, or hereafter appointed as presiding or hearing officers through civil service, may act and shall be designated as hearing commissioners under this section, but shall be subject to this section with respect to salaries and removals from office.

(d) **DISQUALIFICATION OF PRESIDING OFFICERS.**—Any party may file with the agency a timely affidavit of personal bias or disqualification of any presiding officer assigned to hear and determine any case, setting forth with particularity the grounds for such disqualification. After investigation or hearing by the agency or any other presiding officer to whom the matter may be referred, the agency or such presiding officer shall either find the affidavit without merit and direct the case to proceed as assigned or cause another presiding officer to be assigned to the case. Where such affidavit is found to be without merit the affidavit, any record made thereon, and a memorandum decision and the order of the agency shall be made a part of the record in the case and subject to available judicial review upon appeal from any order or decision ultimately entered. A presiding officer shall withdraw from any case wherein he deems himself disqualified for any reason.

(e) **POWERS AND DUTIES OF PRESIDING OFFICERS.**—In all cases presiding officers shall have power in any place (1) to administer oaths and affirmations, and take affidavits; (2) to issue subpoenas requiring the attendance and testimony of witnesses and the production of books, contracts, papers, documents, and other evidence; (3) to summon and examine witnesses and receive evidence; (4) to cause depositions to be taken in the manner prescribed by the rules of the agency; (5) to regulate all proceedings in every hearing before them and, subject to the rules and regulations of the agency, to perform all acts and take all measures necessary for the efficient conduct of the hearing; (6) to admit or exclude evidence; (7) to rule upon the form of any question asked or the scope and extent of testimony, statements, or cross-examination; and (8) subject to the rules of the agency, to dispose of motions, requests for adjournment continuances, and similar matters.

(f) **ENFORCEMENT OF ORDER AND PROCESS.**—If any person in connection with any administrative proceeding disobeys or resists any lawful order or process, or is guilty of misconduct during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed, or refuses to take the oath as a witness, or after taking the oath refuses to be examined according to law, the agency shall certify the facts to the district court having jurisdiction in the place at which the hearing is held, which court shall thereupon in a summary manner hear the evidence as to the acts complained of, and, if the evidence so warrants, compel compliance or punish such person in the same manner as for contempt.

(g) **PREHEARING CONFERENCES.**—Upon being so authorized and directed by the agency specially or by rules, every presiding officer shall have power, at any time subsequent to the formal initiation of the case and prior to his decision, to initiate, conduct, or participate in negotiations looking toward the informal settlement or other disposition in whole or in part of any case; and, in accordance with such rules and regulations as may be prescribed by the agency, each presiding officer shall have power in any case to direct the parties or their attorneys to appear before him at any such time for a conference to consider (1) the simplification of the issues; (2) the necessity or desirability of amendments to the pleadings; (3) the possibility of obtaining stipulations of fact and documents which will avoid unnecessary proof; (4) the limitation of the number of expert or other witnesses; and (5) such other matters as may expedite and aid in the disposition of the case.

(h) **RULES OF EVIDENCE.**—Immaterial, irrelevant, and unduly repetitious evidence shall be excluded from the record of any hearing and, as nearly as may be, the basic principles of relevancy, materiality, and probative force as recognized in Federal judicial proceedings of an equitable nature shall govern the proof of all questions of fact, except that such principles shall be (1) broadly interpreted in such manner as to make effective the adjudicative powers of administrative agencies, (2) shall be adapted to the legislative policy under

which adjudications are made, and (3) shall assure that as a practical matter testimony of reasonable probative value will not be excluded as to any pertinent fact.

(i) **CROSS-EXAMINATION, WRITTEN EVIDENCE, DEPOSITIONS, STIPULATIONS.**—Reasonable cross-examination in open hearing shall be permitted in the sound discretion of the presiding officer except that (1) ex parte statements may be admitted upon consent of the parties; (2) any agency may adopt procedures for the disposition of contested matters in whole or part upon the submission of written evidence, particularly with respect to technical matters and matters of conclusion or inference upon readily available and generally undisputed data, but subject always to rebuttal or cross-examination upon demand; (3) the taking of evidence upon deposition may be utilized by any agency to simplify and expedite the hearing or determination of cases, under such rules as the agency may provide; and (4) any agency may simplify hearings by providing for agreed stipulations of fact as to the whole or any part of the issues in any case.

(j) **OFFICIAL NOTICE.**—Agencies may take official notice of any matter of generally recognized fact or any technical or scientific fact of established character, but parties shall be notified either during hearings or by full reference in decisions or reports or otherwise, of the matters so noticed, with an adequate opportunity to show that such facts are erroneously noticed.

(k) **SUBMISSION OF PROPOSED REPORTS, FINDINGS, ARGUMENTS, AND BRIEFS.**—At the conclusions of hearings, the presiding officer shall afford the parties due notice and opportunity for the submission of proposed findings and briefs or memoranda, and for oral argument. Where the agency itself decides a case or responds to certified questions of law or policy in which it has not heard the evidence and in which no decision of a presiding officer has been rendered, as authorized by subsection (m) (2) hereof, an intermediate report of specific, recommended, and reasoned findings of fact and conclusions of law shall be made and issued by the officer or officers who presided at the taking of evidence; and the agency, before decision, shall afford all parties reasonable opportunity for briefs and argument before it upon the basis of such report or upon such other and further specification of issues as it may indicate to the parties.

(l) **RECORDS.**—In all formal proceedings only one official record (of which there may be any number of copies) shall be kept, upon which decision shall be made and which shall be available to all parties. As to matters of fact, officers hearing or deciding cases, and their assistants or clerks, shall, except as to briefs filed in the case and appropriate matters of official notice, consult no other files, records, data, or materials.

(m) **DECISIONS.**—In the consideration and decision of all administrative cases submitted for adjudication—

(1) presiding officers who heard the case (unless unavailable because of death, illness, suspension, or otherwise, in which case another presiding officer shall complete the disposition of the case) shall find all the relevant facts, including conclusions and inferences of fact, make conclusions of law, and enter an appropriate order, award, judgment, or other form of decision, which shall become a part of the record;

(2) in unusual cases the presiding officer may, upon the conclusion of the hearing in any case, certify to the agency any questions or propositions of law or policy for instructions, and thereupon the agency shall give binding instructions on the questions or propositions so certified; or, upon the conclusion of the hearing in any case, the agency, on petition of all the private parties therein and for good cause shown, may direct that the entire record be forthwith transmitted to it for decision;

(3) all decisions, whether of the presiding officer or of the agency itself, shall be in writing and accompanied both (1) by a statement of the reasons therefor (which may be simple or elaborate as the case may be deemed to require) and (2) by separately stated findings of fact (except to the extent that the facts are stipulated) and conclusions of law upon all points upon which the decision is rested, except that separate statements of reasons may be omitted where such findings or conclusions adequately set forth the reasons for the decision, and except that on review by it any agency may adopt in whole or part the findings, conclusions, and decisions of presiding officers;

(4) in the consideration and decision of any case, hearing, or deciding officers shall personally master such portions of the record as are cited by the parties. They may utilize the aid of law clerks or assistants (who

shall perform no other duties or functions) but such officers and such clerks or assistants shall not discuss particular cases or receive advice, data, or recommendations thereon with or from other officers or employees of the agency or third parties, except upon written notice and with the consent of all parties to the case or upon open rehearing;

(5) all such findings, conclusions, decisions, opinions, and orders shall be promptly served upon the interested parties or their representatives, together with, so far as practicable, a statement of any further procedures or alternatives available to such parties;

(6) in every case, the findings and conclusions shall encompass all relevant facts of record and shall themselves be relevant to, and shall adequately support, the decision, order, or award entered;

(7) each agency shall specially publish in leaflet or bound form such of its decisions as are deemed valuable to the public or are to be relied upon as precedents;

(8) nothing in this section shall be taken to preclude any officer or employee of an agency, or group of officers or employees, from presenting for the consideration of deciding officers proposed findings, reports, or decisions (in addition to those presented by the presiding officer) provided the parties are afforded adequate notice and opportunity to meet such proposals by briefs and oral argument.

(n) **EFFECT OF DECISIONS OF PRESIDING OFFICERS.**—In the absence of an appeal to, or review by, the agency within such reasonable period of time as may be prescribed by rule by the agency for that purpose, a decision of a presiding officer shall without further proceedings become the final decision of the agency and, as such, enforceable (or subject to subsequent reopening or reconsideration) to the same extent and in the same manner as though it had been duly entered by the agency as its decision, judgment, order, award, or other ultimate determination in the case. Decisions subject to the approval of the President, however, shall not become effective until such approval has been duly given.

(o) **AGENCY REVIEW OF DECISIONS OF PRESIDING OFFICERS.**—Upon appeal to the agency from a decision of a presiding officer, the appellant shall set forth separately each error asserted, in detail and with particularity; and only such questions as are specified by the appellant's petition for review and such portions of the record as are specified in the supporting brief need be considered by the agency. Where the appellant asserts that the findings of fact made by the presiding officer are unsupported by evidence, the agency may limit its review of such ground to the inquiry whether, upon the portions of the record cited by the parties, the findings made by the presiding officer are clearly contrary to the manifest weight of the evidence. Where an agency on petition or on its own motion reviews the decision of a presiding officer, it shall with particularity specify the points, issues, or grounds of such review. Upon the taking of an appeal to it or upon review by it on petition or its own motion, the agency shall have authority to affirm, reverse, modify, or set aside in whole or in part the decision of the presiding officer, or to remand the case to the presiding officer for the purpose of receiving further evidence and making further findings and conclusions or for further proceedings.

(p) **REHEARING, REOPENING, AND RECONSIDERATION OF DECISIONS.**—All decisions which have become final may be subject to rehearing, reopening, or reconsideration by a presiding officer of the agency in the manner and to the extent authorized by the legislation under which the agency originally exercised adjudicatory powers, under such rules as the agency may provide.

SEC. 309. SANCTIONS AND BENEFITS.—Only upon final adjudication shall action be taken or powers exercised except in connection with necessary preliminary, intermediate, or emergency powers expressly authorized by statute. Penalties, recoveries, denials, conditions, and prohibitions shall not be imposed, exercised, or demanded beyond those authorized by statute, and no sanctions not authorized by statute shall be imposed by any agency or combination of agencies. Rights, privileges, benefits, or licenses authorized by law shall not be denied or withheld in whole or in part where adequate right or entitlement thereto is shown. The effective date of the imposition of sanctions or withdrawal of benefits or licenses shall, so far as deemed practicable, be deferred for such reasonable time as will permit the persons affected to adjust their affairs to accord with such action or to seek administrative reconsideration or judicial review.

SEC. 310. JUDICIAL REVIEW.—In order to facilitate and simplify review by the Federal courts of all administrative adjudications and to eliminate technical

impediments thereto, judicial review of administrative action shall be had in accordance with the following principles:

(a) **SPECIAL PROVISIONS.**—All provisions of law for judicial review applicable to particular agencies or subject matter, except as the same may be inconsistent with the provisions of this title, shall remain valid and binding, as shall all provisions specifically precluding judicial review or prescribing a broader scope of review than provided in subsection (e) hereof.

(b) **RIGHT AND PARTIES.**—Except as otherwise specifically provided by law or excepted from the operation of this title, and regardless of whether the subject is one of constitutional or statutory right, power, privilege, immunity, or benefit, any party adversely affected by any final decision of any agency rendered pursuant to the formal procedures provided herein shall be entitled to judicial review in accordance with applicable statutory provisions or, in the absence thereof, by application in equity or for writ of mandamus. All decisions upon such review shall be subject to appeal, or review upon writ of certiorari by the Supreme Court of the United States, as provided by law.

(c) **COURTS AND VENUE.**—Whenever a court shall hold that it is without jurisdiction to hear and determine a timely application or petition for such review on the ground that the same should have been filed before some other court, it shall transmit such pleadings and other papers, together with a statement of its reasons for doing, to such court of competent jurisdiction as may be designated by the applicant or petitioner, which court shall, after permitting any necessary amendments, thereupon proceed as in other cases. Where such applications or petitions are filed in the proper court but are deficient in form or type of remedy, timely amendment shall be permitted.

(d) **REVIEWABLE ORDERS.**—Administrative orders, declaratory or otherwise, directing action, assessing penalties, prohibiting conduct, or denying claimed rights, privileges, or benefits under the Constitution or statutes shall be subject to such review: *Provided, however,* That only final orders or orders for which there is no other adequate judicial remedy shall be subject to such review. Preliminary or intermediate orders, so far as the same are by law reviewable, shall be subject to review upon the review of final orders. An order shall be final for purposes of such review notwithstanding that no petition for rehearing or reconsideration has been presented to the administrative authority involved.

(e) **SCOPE OF REVIEW.**—Regardless of the form of the review proceeding, the reviewing court shall consider and decide, so far as necessary to its decision and where raised by the parties, all relevant questions arising upon the whole record or such parts thereof as may be cited by any of the parties; and shall set aside administrative findings, inferences, conclusions, or orders whenever it finds them: (1) contrary to constitutional right, power, privilege, or immunity; (2) in excess of the statutory authority or jurisdiction of the agency; (3) made or promulgated upon unlawful procedure; (4) unsupported by substantial evidence; or (5) arbitrary or capricious: *Provided, however,* That upon such review due weight shall be accorded the experience, technical competence, specialized knowledge, and legislative policy of the agency involved as well as the discretionary authority conferred upon it.

(f) **RECORD.**—Upon petition or application for judicial review, enforcement, of restraint of an administrative order or action, it shall not be necessary to print the complete administrative record and exhibits in the case unless the reviewing court for good cause so orders. The moving party shall print as a supplement or appendix to his brief, which may be separately bound, the pertinent pleadings, orders, decisions, opinions, findings, and conclusions of both the agency and any presiding officer, together with relevant docket entries arranged chronologically and such further parts of the record as it is desired the court shall read. Omissions shall be indicated, reference to the pages of the typewritten transcript of the record as filed shall be made, and the names of witnesses shall be indexed. The responding party shall similarly print such portions of the record as it is desired the court shall read. Reviewing courts may by rule amplify or modify the provisions of this section to further its purpose.

[H. R. 2602, 79th Cong., 1st sess.]

A BILL To facilitate the administration of government and improve the quality of justice

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Government Practices Act." Its objects shall be to improve the relations between

private citizens and governmental authority, to facilitate the administration of justice, to protect civil rights, and to preserve the form of government guaranteed by the Constitution of the United States of America.

PUBLIC INFORMATION

SEC. 2. To the end that every person, entity, or organization shall be fully informed of the law, regulations, and procedure of every office, board, commission, independent establishment, authority, corporation, department, bureau, division, institution, service, administration, or other unit of the executive branch of the Federal Government, hereinafter called "agency," except to the extent that there is directly involved any military, naval, or diplomatic function requiring secrecy in the public interest—

RULES

(a) Every agency shall separately state and currently publish in the Federal Register—

(1) descriptions of its internal and field organization, together with the general course and method by which each type of matter directly affecting private parties is channeled and determined;

(2) substantive regulations authorized by law and required to effectuate authority or apprise parties of rights or liabilities, as well as all statements of general policy or interpretation of general public application and utilized by the agency; and

(3) rules specifying the nature and requirements of all formal or informal procedures available to private parties, including simplified forms and adequate instructions as to all papers, reports, or examinations.

ORDERS

(b) Every agency shall preserve and publish or make available to public inspection all—

(1) rulings on questions of law, other than those relating to the internal management of the agency and not directly affecting the public or the rights of any person as defined by this Act; and

(2) orders, including findings or opinions with reference thereto, issued in the adjudication of any case.

RELEASES

(c) All releases intended for general public information or of general application or effect not otherwise published or made available pursuant to this section shall be—

(1) filed promptly with the Division of the Federal Register, and

(2) there preserved and made available to public inspection:

Provided, however, That no agency shall, directly or indirectly, issue publicity reflecting adversely upon any person, product, commodity, security, private activity, or enterprise otherwise than by issuance of the full texts of authorized public documents, impartial summaries of the positions of all parties to any controversy, or the issuance of legal notice of public proceedings within its jurisdiction.

LIMITATION OF PENALTIES, INVESTIGATIONS, AND REPORTS

SEC. 3. To the end that administrative penalties, investigations, and reports shall be limited to the requirements of good government, and parties be assured rights of appearance and prompt relief—

PENALTIES AND BENEFITS

(a) No agency shall impose penalties or forbid or require action not both specified by statute and expressly delegated to such agency by lawful authority; and any sanction, seizure, process, penalty, prohibition, requirement, remedy, relief, assistance, license, permit, or other grant, or permission imposed or dispensed by any agency through any rule, order, license (including any term or condition thereof) or otherwise shall be unlawful to the extent that it is in excess of administrative authority or withholds privileges or benefits in derogation of private right: *Provided, however,* That no person shall be subject to any rule or order prior to its publication or service, respectively, for a reasonable time unless

both expressly authorized by law and required in any case for good cause: *And provided further*, That no person shall be subjected to any penalty or deprived of any right or privilege for action taken in accordance with the rule, order, permission, or interpretation of any agency.

LICENSES AND PERMITS

(b) No license (including permit, certificate, approval, registration, charter, membership, or other form of permission) shall—

- (1) be required by any agency unless expressly authorized by statute;
- (2) be denied or withdrawn, revoked, annulled, or suspended in whole or in part except in accordance with this Act;
- (3) be withdrawn unless first any facts which may warrant such withdrawal shall have been officially brought to the attention of the licensee in writing followed by reasonable opportunity to demonstrate or achieve compliance with all lawful requirements except in cases of clearly demonstrated willfulness or those in which public health, morals, or safety require otherwise; or
- (4) expire, with reference to any business, occupation, or activity of a continuing nature in any case in which due and timely application for a renewal or a new license has been made, until such application shall have been finally determined:

Provided, moreover, That in any case subject to section 6 (except financial reorganizations) in which an administrative license or permission is required by law and due request is made therefor but no final administrative action is taken, such license or permission shall be deemed granted in full to the extent of the authority of the agency unless the agency shall within sixty days of such application have set the matter for formal proceedings required by this Act.

INVESTIGATIONS

(c) No agency shall exercise investigative powers or require reports unless—

- (1) expressly authorized by statute and within its lawful jurisdiction;
- (2) through regularly authorized representatives for authorized purposes;
- (3) without infringing rights of personal privacy;
- (4) without disturbing private occupation or enterprise beyond the reasonable requirements of law enforcement; and
- (5) substantially necessary to the operation of the agency.

SUBPENAS

(d) Every agency shall issue subpoenas authorized by law to private parties upon request and, as may be required by its general rules of procedure, upon a simple statement of the general purpose or reasonable scope of the testimony or other evidence so sought; and the names of witnesses and the purpose and nature of the evidence so sought shall not be made available to agency prosecutors or investigators. Upon contest of the validity of any administrative subpoena or upon the attempted enforcement thereof, the court shall determine all questions of law raised by the parties, including the authority or jurisdiction of the agency in law or fact, and shall enforce (by the issuance of a judicial order requiring the future production of evidence under penalty of punishment for contempt in case of contumacious failure to do so) or refuse to enforce such subpoena accordingly.

APPEARANCE

(e) Every agency shall accord every person subject to administrative authority and every party or intervenor (including individuals, partnerships, corporations, associations, or public or private agencies or organizations of any character) in any administrative proceeding or in connection with any administrative authority—

- (1) the right at all reasonable times to appear in person or by counsel;
- (2) every reasonable opportunity and facility for negotiation, information, adjustment, or formal or informal determination of any issue, request, or controversy;
- (3) the right to be accompanied and advised by counsel; and
- (4) a prompt determination of any matter within the jurisdiction or competence of the agency:

Provided, however, That no such person or party shall in any manner be made to suffer, through the subsequent exercise of administrative powers or otherwise,

the consequences of any unwarranted or avoidable administrative delay in determining any such matter. In all cases in which an administrative hearing is required by law and the parties are not in default, matters not susceptible of informal disposition in whole or in part shall be promptly heard and decided, except that in fixing the times and places for formal or informal proceedings due regard shall be had for the convenience and necessity of the parties or their representatives.

JUDICIAL REVIEW

SEC. 4. In order that every reviewing court shall have plenary authority to render such decision and grant such relief as right and justice may demand in full conformity with this Act and all other applicable law—

RIGHT OF REVIEW

(a) Notwithstanding any contract, agreement, or undertaking to the contrary, any party subject to, or adversely affected by, any administrative action, rule, or order within the purview of this Act or otherwise presenting any issue of law shall be entitled to judicial review thereof—

(1) as an incident to proceedings for any form of criminal or civil enforcement;

(2) through any special statutory review proceeding relevant to the subject matter; or

(3) in the absence or inadequacy of any relevant statutory review procedure, through any applicable form of legal action, including actions for declaratory judgment or for writs of injunction, mandamus, or habeas corpus:

Provided, however, That any final administrative order (including those upon applications for declaratory rulings or the neglect, failure, or refusal of any agency to act upon any application for a rule, order, permission, or the amendment or modification thereof within the time prescribed by law or within a reasonable time) directing action, assessing penalties, prohibiting conduct, affecting rights or property, or denying in whole or in part claimed rights, remedies, privileges, licenses, permissions, moneys, or benefits under the Constitution, statutes, or other law of the land shall be subject to review pursuant to this section. Any preliminary or intermediate order shall be directly reviewable in any case in which no other judicial remedy is fully adequate. All orders not directly reviewable shall be subject to review upon the review of final acts, rules, or orders. Any action, rule, or order shall be final for purposes of the review guaranteed by this section notwithstanding that no petition for rehearing, reconsideration, reopening, or declaratory ruling has been presented to or ruled upon by the agency involved.

INTERIM RELIEF

(c) Unless the agency of its own motion or on request shall postpone the effective date of any action, rule, or order pending judicial review, every reviewing court, and every court to which a case may be taken on appeal from or upon application for certiorari or other writ to, a reviewing court, shall—

(1) have full authority to issue all necessary and appropriate writs, restraining or stay orders, or preliminary or temporary injunctions, mandatory or otherwise, required in the judgment of such court to preserve the status or rights of the parties pending full review and determination as provided in this section;

(2) postpone the effective date of any administrative action, rule, or order to the extent necessary to accord the parties a fair opportunity for judicial review of any substantial question of law; and

(3) grant such affirmative relief, notwithstanding statutory or other administrative authority in the premises, in any case in which any legal right, privilege, immunity, permission, relief, or benefit expires or is denied, withdrawn, or withheld, in whole or in part, to the extent necessary to preserve the status of the parties pending the review guaranteed by this section.

SCOPE OF REVIEW

(d) The reviewing court shall consider and decide all relevant questions of law arising upon the whole record; and the court shall hold unlawful any act or set aside any application, rule, order, or administrative finding or conclu-

sion made, sanction or requirement imposed, or permission or benefit withheld to the extent that it finds them—

- (1) inconsistent with any requirement of this Act;
- (2) contrary to constitutional right, power, privilege or immunity;
- (3) in excess of statutory authority, jurisdiction, or limitations or short of statutory right, grant, privilege, or benefit;
- (4) made or issued without full observance of all procedures required by law;
- (5) unsupported by substantial, credible, and material evidence upon the whole administrative record in any case in which the action, rule, or order is required by statute to be taken, made, or issued after administrative hearing;
- (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court; or
- (7) arbitrary or capricious.

APPEALS

(c) The judgments of original courts of review shall be appealable in accordance with existing provisions of law and, in cases in which there is no appeal thereto as of right and probable ground appears that any person has been denied the full benefit of this Act, reviewable by the Supreme Court upon writs of certiorari.

OTHER PROVISIONS OF LAW

(f) All provisions or additional requirements of law applicable to the judicial review of acts, rules, or orders generally or of particular agencies or subject matter, except as the same may be inconsistent with the provisions of this Act, shall remain valid and binding as shall all statutory provisions expressly precluding judicial review or prescribing broader scope or availability of review than that provided in this section.

SEPARATION OF PROSECUTING FUNCTIONS

SEC. 5. In order that no head, member, officer, employee, or agent of any agency shall serve both as prosecutor and deciding authority—

(a) No proceeding, rule, or order subject to the requirements of section 6 shall be lawful unless with reference to that type of proceeding the agency involved shall have previously and completely delegated either to one or more of its responsible officers or to one or more of its members all investigative and prosecuting functions (over which no hearing or deciding officer shall thereafter have exercised any control or supervision) and the officers or members so designated shall have had no part in the decision or review of such cases; and, in any agency in which the ultimate authority is vested in one person, such individual shall also delegate the hearing and initial decision of such cases to examiners or boards of examiners.

(b) In the making of rules or consideration of petitions subject to the requirements of section 5, no subordinate officer or employee exercising or supervising investigative or prosecuting functions shall take any part in the decision as to the form or contents of any rule or the acceptance or rejection of such petitions.

(c) Every general delegation and separation of functions required of any agency by this section shall be specifically provided in its rules published pursuant to section 1: *Provided, however,* That in any complaint or other paper the agency may appear in name as the moving party; and nothing in this section shall be taken to prevent the supervision, consideration, or acceptance of settlements or adjustments by hearing or deciding officers.

RULE MAKING

SEC. 6. Except to the extent that there is directly involved any military, naval, or diplomatic function of the United States—

NOTICE

(a) Every agency shall publish general notice of proposed rule making including—

- (1) a statement of the time, place, and nature of any available public rule making procedures;

(2) full and specific reference to the authority under which the rule is proposed; and

(3) a description of the subjects and issues involved:

Provided, however, That this subsection shall not be mandatory as to interpretative rules, general statements of policy, or rules of agency organization or procedure and shall not apply in cases in which notice is impracticable because of unavoidable lack of time or other emergency affecting public safety or health.

PROCEDURES

(b) In all cases in which notice of rule making is required pursuant to subsection (a) of this section or otherwise, the agency shall afford interested parties an adequate opportunity, reflected in its published rules of procedure, to participate in the formulation of the proposed rule or rules through—

(1) submission of written data or views;

(2) attendance of conferences or consultations; or

(3) presentation of facts or argument at informal hearings:

Provided, however, That, in place of the foregoing provisions of this subsection, in all cases in which rules are required by statute to be issued only after a hearing, the hearing and decision requirements of sections 7 and 8 shall apply. In all other rule-making procedures parties unable to be present shall be entitled as of right to submit written data or arguments, all submissions shall be given full consideration by the agency, and the reasons as well as findings and conclusions of the agency as to all relevant issues shall be published upon the issuance or rejection of the rules or proposals involved. Nothing in this section shall be held to limit or repeal additional requirements imposed by law.

PETITIONS

(c) Every agency authorized to issue rules shall accord any interested person the right to petition for the issuance, amendment, or rescission of any rule in conformity with adequate published procedures for the submission and prompt consideration and disposition of such requests.

ADJUDICATION

SEC. 7. In every case of administrative adjudication in which the rights, duties, obligations, privileges, benefits, or other legal relations of any person are required by statute to be determined only after opportunity for an administrative hearing, except to the extent that there is directly involved any matter subject to a subsequent trial of the law and the facts de novo in any court—

NOTICE

(a) Every agency undertaking the adjudication of any case shall serve notice in writing upon all parties directly affected, specifying—

(1) the time, place, and nature of available administrative proceedings;

(2) the particular legal authority and jurisdiction under which the proposed proceeding is to be had; and

(3) the matters of fact and law in issue:

Provided, however, That the statement of issues of fact in the words of the authority under which the agency is proceeding shall not be compliance with this requirement.

PROCEDURE

(b) In every case in which notice is required the agency shall afford all interested parties the right and benefit of fair procedure for the settlement or adjudication of all relevant issues through (1) an adequate opportunity for the informal submission and full consideration of facts, claims, argument, offers of settlement, or proposals, of adjustment and (2) thereafter, to the extent that the parties are unable to so determine any controversy by consent, formal hearing, and decision in conformity with sections 7 and 8.

DECLARATORY RULINGS

(c) Upon the petition of any proper party and in conformity with this section, every agency shall, except in tax and patent matters, make and issue declaratory rulings to terminate a controversy or to remove uncertainty as to the validity.

or application of any administrative authority, rule, or order with the same effect and subject to the same judicial review as in the case of other rules or orders of the agency.

HEARINGS

SEC. 8. No administrative procedure shall satisfy the requirement of a hearing pursuant to sections 5 or 6 unless—

PRESIDING OFFICERS

(a) To insure the impartiality of hearing or deciding officers—

(1) the case shall be heard—

(A) by the ultimate authority of the agency or by

(B) one or more subordinate hearing officers designated by the agency from members of the board or body which comprises the highest authority therein,

(C) State representatives authorized by statute to preside at the taking of evidence, or

(D) examiners who shall perform no other duties, shall be removable only after hearing for good cause shown, and shall receive a fixed salary not subject to change: *Provided, however,* That in the event hearing or deciding officers are no longer in office or are unavailable because of death, illness, or suspension, other such officers may be substituted in the sound discretion of the agency at any stage of proceedings required by this section and section 8;

(2) the functions of all hearing officers, as well as of those participating in decisions in conformity with section 8, shall be conducted in an impartial and considerate manner, in accord with the requirements of this Act, with due regard for the rights of all parties as well as the facts and the law, and consistent with the orderly and prompt dispatch of proceedings;

(3) such officers, except to the extent required for the disposition of ex parte matters authorized by law, shall not engage in interviews with, or receive evidence or argument from, any party directly or indirectly except upon opportunity for all other parties to be present and in accord with the public procedures authorized by this section and section 8. Copies of all communications with such officers by, respecting, or on behalf of any party or case shall be served upon all the parties;

(4) upon the filing of a timely affidavit of personal bias, disqualification, or conduct contrary to law of any such officer at any stage of proceedings, the agency or another such officer, after hearing the facts, shall make findings, conclusions, and a decision as to such disqualification which shall become a part of the record in the case and be reviewable in conformity with section 3.

EVIDENCE

(b) To assure that administrative decision shall be made upon a basis of fact—

(1) the principles of relevancy, materiality, probative force, and substantiality as recognized in Federal judicial proceedings of an equitable nature shall govern the proof, decision, and judicial review of all questions of fact;

(2) the character and conduct of every person or enterprise shall be presumed lawful until the contrary shall have been shown by competent evidence;

(3) In every case in which the burden of proof is upon private parties to show right or entitlement to exceptions, privileges, permits, or benefits their competent evidence to that effect shall be presumed true unless affirmatively disproved by other evidence;

(4) every party shall have the right of cross examination and the submission of rebuttal evidence;

(5) the taking of official notice shall be unlawful unless of a matter of generally recognized or scientific fact of established character and unless the parties, before the decision becomes effective, are accorded an adequate opportunity to show the contrary by evidence;

(6) no sanction, prohibition, or requirement shall be imposed or grant, license, permission, or benefit withheld in whole or in part except upon evidence which on the whole record is competent, credible, substantial and material.

RECORD

(d) The transcript of testimony adduced and exhibits admitted, together with all pleadings, exceptions, motions, requests, and papers filed by the parties, other than separately presented briefs or arguments of law, shall constitute the complete and exclusive record and be made available to all the parties.

DECISIONS

SEC. 9. In all cases in which an administrative hearing is required to be conducted in conformity with section 7—

INTERMEDIATE REPORTS

(a) Unless the officer or officers who presided at the hearing also decide the case, they shall prepare and serve upon all parties and deciding officers an intermediate report of specific recommended findings of fact and conclusions of fact and law upon all relevant issues presented by the whole record.

SUBMISSIONS

(b) Officers who prepare intermediate reports or decide cases shall, prior to the preparation of such reports or decision of cases, afford all parties full opportunity for the submission of briefs, exceptions to any intermediate report, proposed findings or conclusions, and oral argument.

CONSIDERATION OF CASES

(c) All issues of fact shall be considered and determined exclusively upon the record made in conformity with section 7. In the formulation and submission of intermediate reports or in the decision of any case, all hearing or deciding officers shall personally consider the whole or such parts of the record as are cited by the parties, with no other aid than that of clerks or assistants who perform no other duties; and no such officer, clerk, or assistant shall consult with or receive oral or written comment, advice, data, or recommendations respecting any such case from other officers or employees of the agency or from third parties.

FINDINGS AND OPINIONS

(d) All final decisions and determinations shall be stated in writing and accompanied by a statement of reason, findings, and conclusions upon all relevant issues of law, fact, or discretion raised by the parties; *Provided, however,* That the findings and conclusions in every case shall encompass all relevant facts of record and shall themselves be relevant to, and shall adequately support, the decision and order or award entered.

EFFECTIVE DATE

SEC. 10. This Act shall take effect ninety days after its approval: *Provided, however,* That no procedural requirement shall be mandatory as to any administrative proceeding formally initiated or completed prior to such date.

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OFFICE OF BUDGET AND FINANCE
Legislative Reports and Service Section

79th-1st, No. 204

DIGEST OF PROCEEDINGS OF CONGRESS OF INTEREST TO THE DEPARTMENT OF AGRICULTURE
(Issued November 20, 1945, for actions of Monday, November 19, 1945)

(For staff of the Department only)

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HIGHLIGHTS: Senate passed reorganization bill; agreed to Taft amendment to continue existing reorganization orders until July 1, 1947. Agreed to Sen. Stewart's request to refer to the Agriculture and Forestry Committee his resolution to terminate rationing. Sen. O'Mahoney inserted his statement urging development of a constructive wool policy. House received President's message recommending health program; Sen. Wagner and Rep. Dingell introduced bills based on message.

SENATE

1. REORGANIZATION. Passed with amendments H.R. 4129, the reorganization bill (pp. 10969-75). Agreed to Sen. Taft's (Ohio) amendment to provide that reorganizations effected under the First War Powers Act shall continue until July 1, 1947, so that the President "may have full opportunity to submit a reorganization plan making the changes permanent if he wishes to do so" (pp. 10971-2). Rejected Sen. Smith's (N.J.) amendments (1) to eliminate all restrictions on the President's proposals and provide for adoption by positive law and (2) to automatically refer all plans to committee for action within 10 days (p. 10972).
2. RATIONING. Agreed to Sen. Stewart's (Tenn.) request that the Banking and Currency Committee be discharged from further consideration of his resolution, S. Res. 185 (expressing the sense of the Senate that the rationing of butter, oleomargarine, fats, oils, and meats should cease) and to have the resolution referred to the Agriculture and Forestry Committee (pp. 10967-8).
3. WOOL. Sen. O'Mahoney, Wyo., inserted his testimony before the Special Committee on the Production, Transportation, and Marketing of Wool in which he urged development of a constructive wool policy (pp. 10968-9).
4. RESCISSION BILL. This bill, H.R. 4407, was made the order of business for Nov. 21 (pp. 10976-7).
5. NOMINATION. Confirmed the nomination of Robert E. Freer to be Federal Trade Commissioner (p. 10978).

6. PERSONNEL; HEALTH. H. R. 2716, as reported by the Civil Service Committee (see Digest 202): Provides for promoting and maintaining the physical and mental fitness of employees of the Federal Government; to carry out these purposes the heads of departments and agencies would be authorized, within the limits of appropriations made by the Congress, to establish health programs for their employees; services provided under such programs would be limited to treatments of minor illnesses and dental conditions and emergency cases of injury or illness sustained by an employee in the performance of his duty, preemployment and other examinations; referral of employees to private physicians and dentists; and education and preventive programs relating to health; designates the CSC as the coordinating agency in the development of such services, and provides that programs can be established only upon recommendation of the Commission after consultation with the Public Health Service; and prohibits the establishment of health programs under the act in localities in which the number of persons employed is not sufficient to warrant the furnishing of such services. ...
7. ADMINISTRATIVE LAW. The Judiciary Committee reported with amendment S. 7, to improve the administration of justice by prescribing fair administrative procedure (S.Rept. 752) (p. 10959).
8. MINERALS. The Public Lands and Surveys Committee reported with amendment H.R. 608, to exclude certain lands in Deschutes County, Oreg., from the provisions of the statutes relating to the promotion of the development of U.S. mining resources (S. Rept. 753) (p. 10959).
9. RESEARCH; ATOMIC ENERGY. Sen. Hoey, N.C., inserted a Wake Forest College resolution urging open research and discussion with other nations on atomic energy. (p. 10958-9).
10. MILITARY TRAINING. Sen. Butler, Nebr., inserted an Ansgar Lutheran editorial and a serviceman's letter criticizing universal military training (pp.10959-60).
11. VETO. Sen. Vandenburg, Mich., spoke in favor of the item veto and included a Gallup poll on the subject (pp. 10957-8).

HOUSE

12. PRICE CONTROL. Rep. Gallagher, Minn., commended OPA price administration and included a Chicago Herald editorial on the subject (pp. 10980-1).
13. COFFEE SUBSIDY. Rep. Buffett, Nebr., criticized the proposed \$24,000,000 six-months' coffee subsidy (p. 10984).
14. COTTON STATISTICS. Received this Department's draft of a proposed bill on the collection and publication of statistics of the grade and staple length of cotton. To Agriculture Committee. (p. 10998).
15. PERSONNEL; RETIREMENT. Both Houses received CSC's draft of a proposed bill to provide eligibility for annuity at age 70 after at least 5 years of service in lieu of 15 years of such service. To Civil Service Committees. (pp.10958,10998)
16. HEALTH; PRESIDENT'S MESSAGE. Received the President's recommendations for a public-health program (pp. 10989-93).
17. ST. LAWRENCE SEAWAY. Rep. Pittenger, Minn., reported on the status of this project (p. 10983-4).

4. That security regulations be limited to direct military application of atomic power and that free research and right of publication be immediately resumed in the field of atomic physics.

Passed by the faculty of Wake Forest College in regular session November 12, 1945.

E. B. EARNSHAW,
Secretary.

PEACETIME COMPULSORY MILITARY TRAINING—LETTER FROM ORMAL L. MILLER

Mr. CAPPER. Mr. President, I have received a letter from Rev. Ormal L. Miller, pastor of the First Methodist Church, of Topeka, Kans., expressing his opposition to peacetime compulsory military training. I ask unanimous consent to present the letter and that it be appropriately referred and printed in the RECORD.

There being no objection, the letter was received, referred to the Committee on Military Affairs, and ordered to be printed in the RECORD, as follows:

THE FIRST METHODIST CHURCH,
Topeka, Kans., November 8, 1945.

Hon. ARTHUR CAPPER,
Senate Chamber, Washington, D. C.

DEAR SENATOR CAPPER: I want to register a very emphatic protest against the program for compulsory military training which is being proposed. In my judgment it is a serious mistake with far-reaching consequences for the future.

It should be very apparent to us by this time that military power is a very dangerous factor in the life of any nation. It does not provide security, as witness the plight first of France, and later of Germany. It inevitably creates tensions and suspicions which sooner or later result in trouble.

The military leaders of the Nation have demonstrated their ability to prosecute a successful war, but I refuse to grant them superior insight into the way to maintain peace. It is my belief that we will make a fatal mistake to permit them to influence the future course of the Nation. We have fought two tragic wars to rid the world of militarism, and now having decisively crushed militarism in Germany and Japan, it seems unbelievable that we will assume the same role which has brought them to disaster.

Reference has been made to our responsibility to the future youth of the Nation. It seems to me we have a very great responsibility to the youth of this generation, and of a generation ago, who have made a great sacrifice to rid the world of this curse. Our greatest contribution to future generations will not be military regimentation, but vigorous and sacrificial efforts to establish vital agencies of peace and international cooperation.

The training of large armies is not our problem. At the time of Pearl Harbor we had many men in training, but industry was not in production to supply them. I am convinced that any real emergency will be met adequately by civilian armies if need be, provided atomic power has not produced catastrophe first. We confront a new phase of international history, and it is fatal to attempt to carry out-moded methods into the future. Rather let us be adventurous in building understanding, brotherhood, and creative agencies of peaceful cooperation.

Sincerely yours,

ORMAL L. MILLER.

UNITED NATIONS CHARTER — LETTER FROM CABINET OF WICHITA (KANS.) COUNCIL OF CHURCHES

Mr. REED. Mr. President, I ask unanimous consent to present for printing in the RECORD and appropriate refer-

ence a letter from the cabinet of the Wichita (Kans.) Council of Churches relating to the United Nations Charter.

There being no objection, the letter was received, referred to the Committee on Foreign Relations, and ordered to be printed in the RECORD, as follows:

WICHITA COUNCIL OF CHURCHES,
Wichita, Kans., November 14, 1945.

Hon. CLYDE M. REED,
United States Senate, Washington, D. C.

DEAR SENATOR REED: The United Nations Charter has been ratified with unprecedented speed. The peoples of the earth are pinning high hopes on this important organization. If the United States and Russia and Great Britain will collaborate, UNO will wield an important force in world affairs, but, of these three, the moral leadership rests primarily with the United States.

In reality, if the United States takes the wise course, the other nations of the world will follow our leadership and UNO will succeed. If we follow the wrong course, it will fail. To make it succeed, the wisest step for the United States is to precede all decisions that have international implications by consultation with the other nations through UNO.

Such questions as universal military training, the control of atomic energy, the government of vanquished peoples, the disposal of colonies, the establishment of bases, and such, if decided by ourselves, in isolation, will provoke rivalry. But if we will discuss them with the United Nations before taking action, there will be a spirit of confidence and the foundation of peace.

We urge that you be alert to use the offices of the UNO in every proper international matter. We urge that you resist the passage of acts that have bearing on international relations prior to report of our UNO delegates as to the understandings they have been able to secure. If we can hold enactment of universal military training and similar matters in abeyance pending an attempted agreement among the nations, it may be possible to eliminate many costly policies.

Let us get away from bloc action as far as possible. Let us try the democratic way among the nations—full and free discussion, full publicity, full cooperation. This is the most hopeful course for the future.

Respectfully,

CABINET OF THE WICHITA
COUNCIL OF CHURCHES.

RALPH E. LIGHTNER, President.
JOHN W. MELOY, Secretary.

REPORTS OF COMMITTEES

By Mr. BILBO, from the Committee on the District of Columbia:

S. 1152. A bill to effectuate the purposes of the Servicemen's Readjustment Act of 1944 in the District of Columbia, and for other purposes; without amendment (Rept. No. 750).

By Mr. WHEELER, from the Committee on Interstate Commerce:

S. 1289. A bill to amend section 1 of the Federal Power Act, with respect to the terms of office of members of the Federal Power Commission; without amendment (Rept. No. 751).

By Mr. McCARRAN, from the Committee on the Judiciary:

S. 7. A bill to improve the administration of justice by prescribing fair administrative procedure; with an amendment (Rept. No. 752).

By Mr. CORDON, from the Committee on Public Lands and Surveys:

H. R. 608. A bill to exclude certain lands in Deschutes County, Oreg., from the provisions of Revised Statutes 2319 to 2337, inclusive, relating to the promotion of the development of the mining resources of the United States; with an amendment (Rept. No. 753).

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. BUTLER:

S. 1604. A bill for the relief of Leo Stuhr; to the Committee on Claims.

By Mr. WALSH:

S. 1605. A bill to reimburse certain Navy and Marine Corps personnel and former Navy and Marine Corps personnel for personal property lost or damaged as the result of fires which occurred at various Navy and Marine Corps shore activities; to the Committee on Naval Affairs.

(Mr. WAGNER (for himself and Mr. Murray) introduced Senate bill 1606, to provide for a national health program, which was referred to the Committee on Education and Labor, and appears under a separate heading.)

By Mr. BALL:

S. 1607. A bill to provide for the naturalization of Peter Kim; to the Committee on Immigration.

By Mr. MITCHELL:

S. 1608. A bill for the relief of William A. Gallagher; to the Committee on Claims.

By Mr. McMAHON:

S. 1609. A bill for the relief of Catherine Gilbert; to the Committee on Claims.

By Mr. TYDINGS:

S. 1610. A bill to provide for the rehabilitation of the Philippine Islands, and for other purposes; to the Committee on Territories and Insular Affairs.

FIRST SUPPLEMENTAL SURPLUS APPROPRIATION RESCISSION ACT OF 1946—AMENDMENT

Mr. WALSH submitted an amendment intended to be proposed by him to the bill (H. R. 4407) reducing certain appropriations and contract authorizations available for the fiscal year 1946, and for other purposes, which was ordered to lie on the table and to be printed, as follows:

On page 28, line 12, insert the following: "Provided further, That of the funds remaining available for advance base construction, material, and equipment, not to exceed \$6,000,000 shall be available toward reconstruction of the civilian economy of Guam."

UNIVERSAL MILITARY TRAINING

Mr. BUTLER. Mr. President, I ask unanimous consent to have printed in the RECORD, at this point, as a part of my remarks an editorial from the Ansgar Lutheran, of November 12, 1945, entitled "Universal Military Training," and a letter which I have received from a member of the armed forces at Camp Gordon, Ga., dated October 29, 1945.

There being no objection, the editorial and the letter were ordered to be printed in the RECORD, as follows:

UNIVERSAL MILITARY TRAINING

President Truman has spoken. He asks us to introduce universal military training. We must do the same as they have done in Europe in the past. But what has happened to the nations who had universal training? They are now prostrate in the dust. Germany, Japan, Italy, France. The nations, Great Britain, Russia, and the United States, that were not prepared for war, won the war.

Is that the way of the world? Does it mean that he who takes the sword shall perish by the sword? Jesus did say something about that, and He should be an authority worth listening to even in Washington. Oswald Spengler pictured the nations with strong military regimes as nations that would finally

be defeated. He did this in his book *The Decline of the West*. He was right.

What is it that make a nation strong? Would it be out of the way to quote Psalm 20: 7-8? "Some trust in chariots and some in horses; but we will make mention of the name of Jehovah our God. They are bowed down and fallen; but we are risen and stand upright."

Whenever civilization gets to depend upon mechanical things alone, it is doomed.

Universal military training will change our whole national outlook. It will make us develop a military spirit. What effect will that have upon our national life? It will be the military men who will decide our policies. Have we not constantly condemned the military clique of Japan, and the military men of Prussia? Are we now to begin to develop that which we have just defeated and which we are just placing on trial both in Japan and Germany?

Let us give peace a chance. The common man is sick of war. He was made to sacrifice for war, he will gladly sacrifice for peace, but he must be shown the way.

What do our leaders think universal training can do for us? It certainly cannot prepare our souls for national emergencies. It never could. History proves the very opposite.

And the atomic bomb. An atomic bomb may be planted secretly in 50 of our big cities and let off as a time bomb, so these cities will be wiped out in 12 hours. History teaches us that spiritually decadent people always lose. No spiritually weak people can win no matter what weapon they get. Germany proved that. She lost because she had lost her soul. Only the strong Christian can survive.

We know that the advocates of the universal training will say, keep your powder dry. But no powder is ever dry if Christianity is forgotten.

Sometimes we have thought all men sent to Congress should first have a heavy course in history and Christianity before they are sworn into office. We must get to see that the things men live by are not the mechanical things, it is the things of God.

CAMP GORDON, GA., October 29, 1945.
Hon. HUGH BUTLER,
Washington, D. C.

DEAR SIR: At the present time when questions of the utmost importance in regard to the future welfare of the United States are being debated and a decision must be made I feel it is the duty of every citizen to make known his ideas to the elected legislators of the country.

I am deeply concerned about the peacetime military training program. My 2 years' service in the Army have convinced me that 1 year of military training will not materially increase our national strength militarily. The stupid tasks of picking up cigarette butts, match sticks, etc., do not teach our soldiers the functions of warfare. To use the Army's own act as a reason, 17 weeks' training was considered sufficient to fit a man for combat; why is it they are now asking 52 weeks' training, three times as much?

I think one of the determining factors in our recent victory was numerical superiority in personnel, planes, guns, and all types of matériel.

And here is a very vital point that we should keep in mind: peacetime conscription for military training does deny the individuals affected the rights of life, liberty, and pursuit of happiness guaranteed by the Constitution of the United States. If we allow this one encroachment upon our freedom are we not opening the door to those who would like to further subject us by restrictions of our personal freedom? I believe the recent events pertaining to demobilization clearly indicate the potential threat against that freedom as we have always know it.

I do not want to rear my son to be a number in the Army against his will. I feel it is his birthright to have the decision of his life, insofar as it does not transgress upon the rights of his fellow men, in his own hands during peacetime.

However we must have national defense and I sincerely believe a larger Regular Army and Navy, and expanded National Guard, ROTC, with perhaps, a new branch of training at the junior high school or high school to create an enlisted men reserve, but keep the entire program on a voluntary basis.

When our civilization reaches the point where we will not voluntarily defend ourselves, families, country, and way of life then our civilization will have reached a point where it ceases to be worth the sacrifice of armed defense. And at this point may I ask: are all the proponents of peacetime military training on a compulsory basis thinking of defense and only defense? Two years' Army service will cause a freedom-loving American to ask many questions.

I also believe the time-consuming factor in our present defense system is not the mobilization of military personnel, as illustrated by the Army 17 weeks' training program in conjunction with a Regular Army as cadre and a reserve of officers and enlisted men, but rather in the field of matériel, the time lag in manufacturing new war goods. For an illustration, our present equipment will be obsolete in a few years if it is not already obsolete due to the atomic bomb. Our best defense lies in the hands of a few scientific men and industrialists. A group of these men constantly working on new military weapons, in complete cooperation with the military, and simultaneously formulating production plans that will successfully tie in with our industrial set-up. And here is another point worth mentioning, can we take steps that will insure the acceptance and fair trial by the military of new or revolutionary matériel, methods, etc.? We do not want any Gen. Billy Mitchell type episodes in the future.

I have expressed my opinion as a citizen of the United States who is deeply concerned about the future and hope you will consider it as such.

Sincerely,

GERMAN BUSINESS STILL A MENACE—
ARTICLE BY SENATOR THOMAS OF UTAH

[Mr. TAYLOR asked and obtained leave to have printed in the RECORD an article entitled "German Business—Still a Menace," written by Senator THOMAS of Utah and published in the November 1945 issue of the American magazine, which appears in the Appendix.]

WORLD COOPERATION—ADDRESS BY THE
SECRETARY OF STATE

[Mr. MAYBANK asked and obtained leave to have printed in the RECORD an address delivered by the Honorable James F. Byrnes, Secretary of State, at the mayor's dinner at the Francis Marion Hotel, Charleston, S. C., in connection with the Jimmy Byrnes Homecoming Day, November 16, 1945, which appears in the Appendix.]

THE RED CROSS—ARTICLE BY AGNES E.
MEYER

[Mr. GUFFEY asked and obtained leave to have printed in the RECORD an article on the Red Cross, written by Agnes E. Meyer, and published in the Washington Post of November 18, 1945, which will appear hereafter in the Appendix.]

CRITIQUE OF LABOR LAW—ADDRESS BY
PROF. WILLIAM STERNBERG

[Mr. BUTLER asked and obtained leave to have printed in the RECORD an address entitled "Critique of Labor Law," delivered by Prof. William Sternberg, of Creighton University School of Law, Omaha, Nebr., be-

fore the Postwar Institute of the Nebraska Bar Association on October 31, 1945, which appears in the Appendix.]

TO AN ATHLETE DYING YOUNG—SERMON
BY REV. ALLEN PENDERGRAFT

[Mr. MEAD asked and obtained leave to have printed in the RECORD a sermon entitled "To an Athlete Dying Young," delivered by Rev. Allen Pendergraft on November 4, 1945, at All Saints Church, Buffalo, N. Y., which appears in the Appendix.]

UNIVERSAL MILITARY TRAINING

[Mr. HOEY asked and obtained leave to have printed in the RECORD two letters received by him on the subject of universal military training, which appear in the Appendix.]

DELAY IN DISCHARGING SERVICEMEN

[Mr. O'DANIEL asked and obtained leave to have printed in the RECORD three letters addressed to him on the subject of the discharge of servicemen, which appear in the Appendix.]

OUR CHILDREN—POEM BY EDWARD T.
PACA

[Mr. JOHNSON of Colorado asked and obtained leave to have printed in the RECORD a poem entitled "Our Children," written by Edward T. Paca, of Englewood, Colo., which appears in the Appendix.]

NATIONAL HEALTH PROGRAM—MESSAGE
FROM THE PRESIDENT (H. DOC. NO.
380)

The PRESIDENT pro tempore laid before the Senate a message from the President of the United States.

(For President's message see p. 10989 of the House proceedings of today's RECORD.)

The PRESIDENT pro tempore. The message will be referred to the Committee on Education and Labor.

NATIONAL HEALTH PROGRAM

Mr. WAGNER. Mr. President, on behalf of myself and the distinguished chairman of the Committee on Education and Labor [Mr. MURRAY], I ask unanimous consent to introduce the bill which I send to the desk and request that it be referred to the Committee on Education and Labor. The bill proposes to establish a national health program along the lines set forth by the President in his message on this subject just read. Representative DINGELL has introduced a companion bill in the House of Representatives.

The PRESIDENT pro tempore. Without objection, the bill will be received and referred to the Committee on Education and Labor, as requested by the Senator from New York.

The bill (S. 1606) to provide for a national health program, introduced by Mr. WAGNER (for himself and Mr. MURRAY), was read twice by its title and referred to the Committee on Education and Labor.

Mr. WAGNER. Mr. President, in 1939 I introduced a national health bill, which was considered by the Committee on Education and Labor. The bill was given a favorable report by a subcommittee, but because of the war no action was taken.

In 1940, I, with the Senator from Georgia [Mr. GEORGE], introduced a hospital construction bill. The bill was reported out favorably by the Committee

79TH CONGRESS }
1st Session }

SENATE

{REPORT
{No. 752

ADMINISTRATIVE PROCEDURE ACT

REPORT
OF THE
COMMITTEE ON THE JUDICIARY
ON
S. 7

A BILL TO IMPROVE THE ADMINISTRATION
OF JUSTICE BY PRESCRIBING FAIR
ADMINISTRATIVE PROCEDURE



NOVEMBER 19 (legislative day, OCTOBER 29) 1945.—Ordered to be printed

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1945

COMMITTEE ON THE JUDICIARY

PAT McCARRAN, Nevada, *Chairman*

CARL A. HATCH, New Mexico

JOSEPH C. O'MAHONEY, Wyoming

HARLEY M. KILGORE, West Virginia

ABE MURDOCK, Utah

ERNEST W. McFARLAND, Arizona

BURTON K. WHEELER, Montana

CHARLES O. ANDREWS, Florida

JAMES O. EASTLAND, Mississippi

JAMES W. HUFFMAN, Ohio

————— (vacancy)

ALEXANDER WILEY, Wisconsin

WILLIAM LANGER, North Dakota

HOMER FERGUSON, Michigan

CHAPMAN REVERCOMB, West Virginia

KENNETH S. WHERRY, Nebraska

E. H. MOORE, Oklahoma

H. ALEXANDER SMITH, New Jersey

CALVIN M. CORY, *Clerk*

J. G. SOURWINE, *Counsel*

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ADMINISTRATIVE PROCEDURE ACT

NOVEMBER 19 (legislative day, OCTOBER 29), 1945.—Ordered to be printed

Mr. McCARRAN, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany S. 7]

The Committee on the Judiciary, to whom was referred the bill (S. 7), to improve the administration of justice by prescribing fair administrative procedure, having considered the same, reports favorably thereon, with an amendment, and recommend that the bill do pass, as amended.

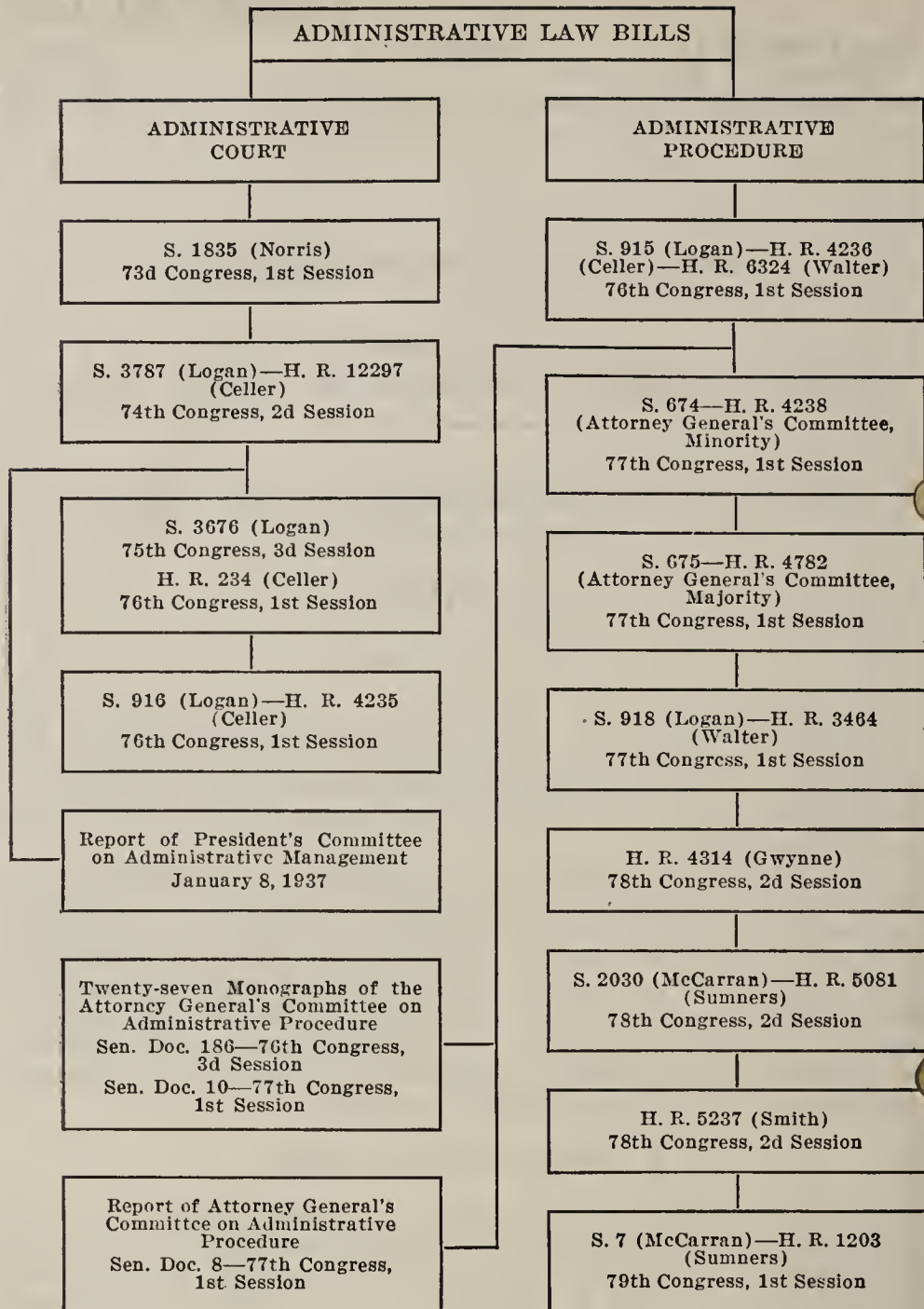
There is a widespread demand for legislation to settle and regulate the field of Federal administrative law and procedure. The subject is not expressly mentioned in the Constitution, and there is no recognizable body of such law, as there is for the courts in the Judicial Code. There are no clearly recognized legal guides for either the public or the administrators. Even the ordinary operations of administrative agencies are often difficult to know. The Committee on the Judiciary is convinced that, at least in essentials, there should be some simple and standard plan of administrative procedure.

I. LEGISLATIVE HISTORY

For more than 10 years Congress has considered proposals for general statutes respecting administrative law and procedure. Figure 1 on page 2 presents a convenient chronological chart of the main bills introduced. Each of them has received widespread notice and intense consideration.

The growth of the Government, particularly of the executive branch, has added to the problem. The situation had become such by the middle of the 1930's that the President appointed a committee

FIGURE 1



to make a comprehensive survey of and suggestions concerning administrative methods, overlapping functions, and diverse organization. While that committee was not primarily concerned with the more detailed questions of administrative law and procedure as the term is now understood, it was inevitably brought face to face with the fundamental problem of the inconsistent union of prosecuting and deciding functions exercised by many executive agencies.

REPORT OF PRESIDENT'S COMMITTEE.—In 1937 the President's Committee on Administrative Management issued its report, in which it said (pp. 32-33, 39-40):

The executive branch of the Government of the United States has * * * grown up without plan or design * * *. To look at it now, no one would ever recognize the structure which the founding fathers erected a century and a half ago. * * * Commissions have been the result of legislative groping rather than the pursuit of a consistent policy. * * * They are in reality miniature independent governments set up to deal with the railroad problem, the banking problem, or the radio problem. They constitute a headless "fourth branch" of the Government, a haphazard deposit of irresponsible agencies and uncoordinated powers. * * * There is a conflict of principle involved in their make-up and functions. * * * They are vested with duties of administration * * * and at the same time they are given important judicial work. * * * The evils resulting from this confusion of principles are insidious and far reaching. * * * Pressures and influences properly enough directed toward officers responsible for formulating and administering policy constitute an unwholesome atmosphere in which to adjudicate private rights. But the mixed duties of the commissions render escape from these subversive influences impossible. Furthermore, the same men are obliged to serve both as prosecutors and as judges. This not only undermines judicial fairness; it weakens public confidence in that fairness. Commission decisions affecting private rights and conduct lie under the suspicion of being rationalizations of the preliminary findings which the Commission, in the role of prosecutor, presented to itself.

To which, in transmitting it to Congress, the President added (pp. iii-v):

I have examined this report carefully and thoughtfully, and am convinced that it is a great document of permanent importance. * * * The practice of creating independent regulatory commissions, who perform administrative work in addition to judicial work, threatens to develop a "fourth branch" of the Government for which there is no sanction in the Constitution.

See also pages 41-42, 207-210, 215-219, 222-223, 230-239 for additional comments and the very drastic remedy proposed in that report. That Committee recommended the complete separation of investigative-prosecuting functions and personnel from deciding functions and personnel.

EARLIER HEARINGS AND BILLS.—In 1938 the Senate Committee on the Judiciary held hearings on a proposal for the creation of an administrative court and, in that connection, issued a committee print elaborately analyzing administrative powers conferred by statute (S. 3676, 75th Cong., 3d sess.). In 1939 the Walter-Logan administrative procedure bill was favorably reported to the Senate (S. Rept. 442, 76th Cong., 1st sess., on S. 915). In the third session of the same Congress the Walter-Logan bill (S. 915 and H. R. 6324) was reported to the House of Representatives with amendments (see H. Rept. 1149, 76th Cong., 1st sess.; for an annotated draft, see S. Doc. 145, 76th Cong., 3d sess.). The Walter-Logan bill was passed by the Congress but vetoed by the President in 1940 in part on the ground

that action should await the then imminent final report by a committee appointed in the executive branch to study the entire situation (H. Doc. 986, 76th Cong., 3d sess.).

ATTORNEY GENERAL'S COMMITTEE.—In December 1938 the Attorney General, renewing the suggestion which he had previously made respecting the need for procedural reform in the wide and growing field of administrative law, recommended the appointment of a commission to make a thorough survey of existing practices and procedure and point the way to improvements (S. Doc. 8, 77th Cong., 1st sess., p. 251). The President concurred and authorized the Attorney General to appoint a committee for that purpose (*id.*, p. 252). This Committee was composed of Government officials, teachers, judges, and private practitioners. It made an interim report in January 1940 (*id.*, 254–258). Its staff prepared, and in 1940–41 issued, a series of studies of the procedures of the principal administrative agencies and bureaus in the Federal Government (S. Doc. 186, 76th Cong., 3d sess., pts. 1–13; and S. Doc. 10, 77th Cong., 1st sess., pts. 1–14). The Committee held executive sessions over a long period, at which the representatives of Federal agencies were heard. It also held public hearings. It then prepared and issued a voluminous final report. See *Administrative Procedure in Government Agencies—Report of the Committee on Administrative Procedure, Appointed by the Attorney General, at the Request of the President, to Investigate the Need for Procedural Reform in Various Administrative Tribunals and to Suggest Improvements Therein* (S. Doc. 8, 77th Cong., 1st sess.). That Committee is popularly known as the Attorney General's Committee on Administrative Procedure and will be so designated in this report. In the framing of the bill herewith reported, (S. 7), your committee has had the benefit of the factual studies and analyses prepared by the Attorney General's Committee.

SUBSEQUENT BILLS AND HEARINGS.—Growing out of the work of the Attorney General's Committee on Administrative Procedure, several bills were introduced in 1941 (S. 674, 675, and 918, 77th Cong., 1st sess.). Hearings were held on these bills during April, May, June, and July of that year. (See *Administrative Procedure*, hearings, 77th Cong., 1st sess., pts. 1–3, plus appendix.) However, the then emergent international situation prompted a postponement of further consideration of the matter. But all interested administrative agencies were heard at length at that time and the proposals then pending involved the same basic issues as the present bill.

PRESENT BILL.—Based upon the studies and hearings in connection with prior bills on the subject, and after several years of consultation with interested parties in and out of official positions, S. 2030 (78th Cong., 2d sess.) was introduced on June 21, 1944, the companion bill in the House of Representatives being H. R. 5081. The introduction of these bills brought forth a volume of further suggestions from every quarter. As a result, with the opening of the present Congress, a revised and simplified bill was introduced (S. 7, January 6, 1945; H. R. 1203, January 8, 1945).

CONSIDERATION AND REVISION.—Much informal discussion followed the introduction of S. 7 and H. R. 1203. The House of Representatives' Committee on the Judiciary held hearings in the latter part of June 1945.

Previously, that committee and the Senate Committee on the Judiciary had requested administrative agencies to submit their views in writing. These were carefully analyzed and, with the aid of representatives of the Attorney General and interested private organizations, in May 1945 there was issued a Senate committee print setting forth in parallel columns the bill as introduced and a tentatively revised text.

Again interested parties in and out of Government submitted comments orally or in writing on the revised text. These were analyzed by the committee's staff and a further committee print was issued in June 1945. In four parallel columns it set forth (1) the text of the bill as introduced, (2) the text of the tentatively revised bill previously published, (3) a general explanation of provisions with references to the report of the Attorney General's Committee on Administrative Procedure and other authorities, and (4) a summary of views and suggestions received.

Thereafter the Attorney General again designated representatives to hold further discussions with interested agencies and to screen and correlate further agency views, some of which were submitted in writing and some orally. Private parties and representatives of private organizations also participated.

Following these discussions the committee drafted the bill as reported, which is set forth in full in appendix A. The Attorney General's favorable report on the bill, as revised, is set forth in appendix B.

II. APPROACH OF THE COMMITTEE

In undertaking the foregoing very lengthy process of consideration, the committee has attempted to make sure that no operation of the Government is unduly restricted. The committee has also taken the position that the bill must reasonably protect private parties even at the risk of some incidental or possible inconvenience to or change in present administrative operations. The committee is convinced, however, that no administrative function is improperly affected by the present bill.

THE PRINCIPAL PROBLEMS.—The principal problems of the committee have been: *First*, to distinguish between different types of administrative operations. *Second*, to frame general requirements applicable to each such type of operation. *Third*, to set forth those requirements in clear and simple terms. *Fourth*, to make sure that the bill is complete enough to cover the whole field.

The committee feels that it has avoided the mistake of attempting to oversimplify the measure. It has therefore not hesitated to state functional classifications and exceptions where those could be rested upon firm grounds. In so doing, it has been the undeviating policy to deal with types of functions as such and in no case with administrative agencies by name. Thus certain war and defense functions are exempted, but not the War or Navy Departments in the performance of their other functions. Manifestly, it would be folly to assume to distinguish between "good" agencies and others, and no such distinction is made in the bill. The legitimate needs of the Interstate Commerce Commission, for example, have been fully considered but it has not been placed in a favored position by exemption from the bill.

The committee feels that administrative operations should be treated as a whole lest the neglect of some link defeat the purposes of the bill. The chart set forth as figure 2 on page 9 emphasizes this approach of the committee.

COMPARISON WITH WALTER-LOGAN BILL.—The Walter-Logan bill, which was vetoed by the President, differed materially from S. 7 as reported. While it distinguished between regulations and adjudications, the Walter-Logan bill simply required administrative hearings for each and provided special methods of judicial review.

More particularly, in the matter of general regulations, the Walter-Logan bill failed to distinguish between the different classes of rules. It stated that rules should be issued within 1 year after the enactment of the statutory authority. It required a mandatory administrative review upon notice and hearing within a year (sec. 2), and set up a system of judicial review through declaratory judgments by the Court of Appeals for the District of Columbia within a limited time after the adoption of any rule (H. R. 6324, 76th Cong., 3d sess., sec. 3).

In the adjudication of particular cases, the Walter-Logan bill also provided for administrative hearings of any "controversy" before a board of any three employees of any agency. Decisions of such boards were to be made within 30 days and were subject to the apparently summary approval or modification of the head of the agency or his deputy. But independent commissions (not less than three members sitting) were required to hold a further hearing after any hearing by an examiner (sec. 4). A special form of judicial review was provided for any administrative adjudication (sec. 5). A long list of exemptions of agencies by name concluded that bill (sec. 7).

The present bill must be distinguished from the Walter-Logan bill in several essential respects. It differentiates the several types of rules. It requires no agency hearings in connection with either regulations or adjudications unless statutes already do so in particular cases, thereby preserving rights of judicial trials *de novo*. Where statutory hearings are otherwise provided, it fills in some of the essential requirements; and it provides for a special class of semi-independent subordinate hearing officers. It includes several types of incidental procedures. It confers numerous procedural rights. It limits administrative penalties. It contains more comprehensive provisions for judicial review for the redress of any legal wrong. And, since it is drawn entirely upon a functional basis, it contains no exemptions of agencies as such.

COMPARISON WITH ATTORNEY GENERAL'S COMMITTEE REPORT.—The present bill is more complete than the solution favored by the majority of the Attorney General's Committee, but less prolix and more definite than the minority proposed. While it follows generally the views of good administrative practice as expressed by the whole of that Committee, it differs in several important respects. It provides that agencies may choose whether their examiners shall make the initial decision or merely recommend a decision, whereas the Attorney General's Committee made a decision by examiners mandatory. It provides some general limitations upon administrative powers and sanctions, particularly in the rigorous field of licensing, while the Attorney General's Committee did not touch upon the sub-

ject. It relies upon independence, salary security, and tenure during good behavior of examiners within the framework of the civil service, whereas the Attorney General's Committee favored short-term appointments approved by a special "Office of Administrative Procedure."

A more detailed comparison of the present bill, with full references to the report of the Attorney General's Committee, is to be found in the third parallel column of the print issued by this committee in June 1945.

III. STRUCTURE OF THE BILL

The bill, as reported, is not a specification of the details of administrative procedure, nor is it a codification of administrative law. Instead, out of long consideration and in the light of the studies heretofore mentioned, there has been framed an outline of minimum basic essentials. Figure 2 on page 9 diagrams the bill.

The bill is designed to afford parties affected by administrative powers a means of knowing what their rights are and how they may be protected. By the same token, administrators are provided with a simple course to follow in making administrative determinations. The jurisdiction of the courts is clearly stated. The bill thus provides for public information, administrative operation, and judicial review.

SUBSTANCE OF THE BILL.—What the bill does in substance may be summarized under four headings:

1. It provides that agencies must issue as rules certain specified information as to their organization and procedure, and also make available other materials of administrative law (sec. 3).
2. It states the essentials of the several forms of administrative proceedings (secs. 4, 5, and 6) and the limitations on administrative powers (sec. 9).
3. It provides in more detail the requirements for administrative hearings and decisions in cases in which statutes require such hearings (secs. 7 and 8).
4. It sets forth a simplified statement of judicial review designed to afford a remedy for every legal wrong (sec. 10).

The first of these is basic, because it requires agencies to take the initiative in informing the public. In stating the essentials of the different forms of administrative proceedings, it carefully distinguishes between the so-called legislative functions of administrative agencies (where they issue general regulations) and their judicial functions (in which they determine rights or liabilities in particular cases).

The bill provides quite different procedures for the "legislative" and "judicial" functions of administrative agencies. In the "rule making" (that is, "legislative") function it provides that, with certain exceptions, agencies must publish notice and at least permit interested parties to submit their views in writing for agency consideration before issuing general regulations (sec. 4). No hearings are required by the bill unless statutes already do so in a particular case. Similarly, in "adjudications" (that is, the "judicial" function) no agency hearings are required unless statutes already do so, but in the latter case

the mode of hearing and decision is prescribed (sec. 5). Where existing statutes require that either general regulations (called "rules" in the bill) or particularized adjudications (called "orders" in the bill) be made after agency hearing or opportunity for such hearing, then section 7 spells out the minimum requirements for such hearings, section 8 states how decisions shall be made thereafter, and section 11 provides for examiners to preside at hearings and make or participate in decisions.

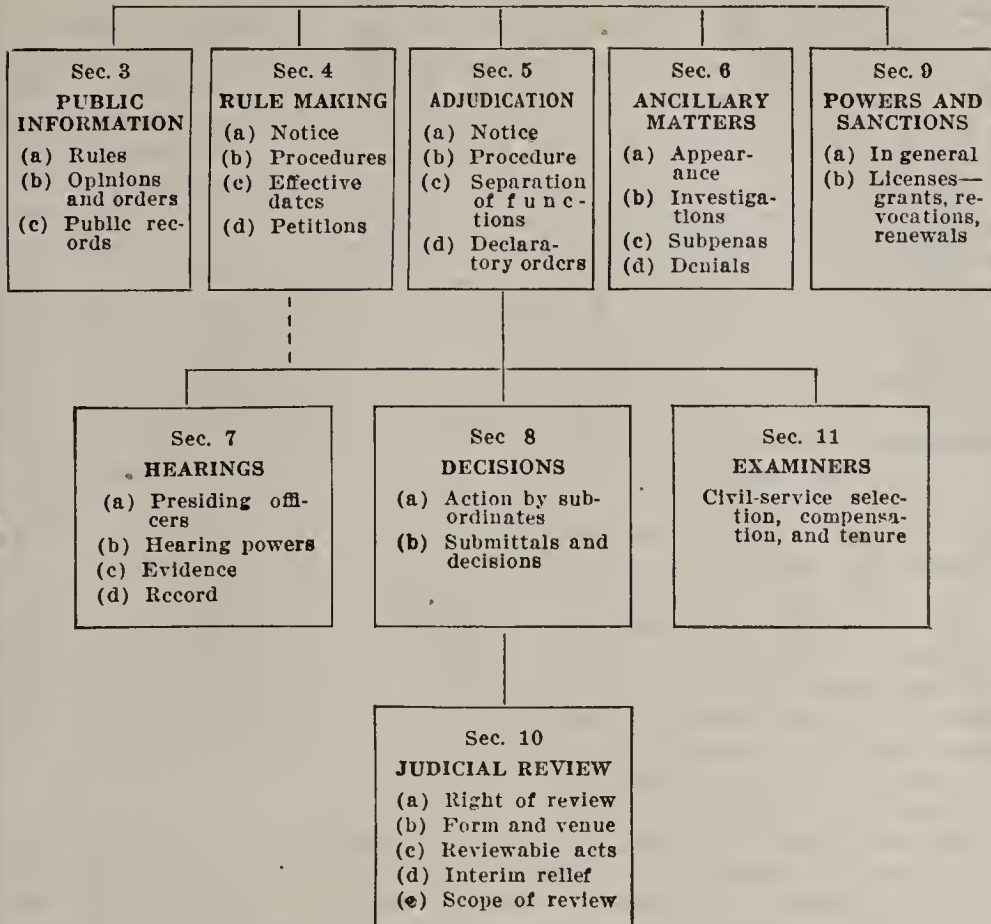
While the administrative power and procedure provisions of sections 4 through 9 are law apart from court review, the provisions for judicial review provide parties with a method of enforcing their rights in a proper case (sec. 10). However, it is expressly provided that the judicial review provisions are not operative where statutes otherwise preclude judicial review or where agency action is by law committed to agency discretion.

KINDS OF PROVISIONS.—The bill may be said to be composed of five types of provisions:

1. Those which are largely formal such as the sections setting forth the title (sec. 1), definitions (sec. 2), and rules of construction (sec. 12).
2. Those which require agencies to publish or make available information on administrative law and procedure (sec. 3).
3. Those which provide for different kinds of procedures such as rule making (sec. 4), adjudications (sec. 5), and miscellaneous matters (sec. 6) as well as for limitations upon sanctions and powers (sec. 9).
4. Those which provide more of the detail for hearings (sec. 7) and decisions (sec. 8) as well as for examiners (sec. 11).
5. Those which provide for judicial review (sec. 10).

The bill is so drafted that its several sections and subordinate provisions are closely knit. The substantive provisions of the bill should be read apart from the purely formal provisions and minor functional distinctions. The definitions in section 2 are important, but they do not indicate the scope of the bill since the subsequent provisions make many functional distinctions and exceptions. The public information provisions of section 3 are of the broadest application because, while some functions and some operations may not lend themselves to formal procedure, all administrative operations should as a matter of policy be disclosed to the public except as secrecy may obviously be required or only internal agency "housekeeping" arrangements may be involved. Sections 4 and 5 prescribe the basic requirements for the making of rules and the adjudication of particular cases. In each case, where other statutes require opportunity for an agency hearing, sections 7 and 8 set forth the minimum requirements for such hearings and the agency decisions thereafter while section 11 provides for the appointment and tenure of examiners who may participate. Section 6 prescribes the rights of private parties in a number of miscellaneous respects which may be incidental to rule making, adjudication, or the exercise of any other agency authority. Section 9 limits sanctions, and section 10 provides for judicial review.

FIGURE 2.—Diagram of principal sections of bill



Section 1 prescribes the title, section 2 the definitions, and section 3 the effective dates and rules of construction. In the above diagram, the first row of sections sets forth the several kinds of requirements, procedures, and limitations; and the second row includes hearing and decision requirements where other statutes require a hearing. Section 10 on judicial review relates not only to decisions made after agency hearing but, in appropriate cases, to the exercise of any other administrative power or authority.

IV. ANALYSIS OF PROVISIONS

The following statements respecting each provision of the bill are designed to answer specific questions relating to language and objectives. Under each section or subsection heading there appears an italicized synopsis of the provision, followed by one or more paragraphs of analysis or special comment. A reading of all the italicized paragraphs will, therefore, afford a synopsis of the whole bill, which is reproduced at length in appendix A at page 32.

SEC. 1. TITLE.—*It is provided that the measure may be cited as the Administrative Procedure Act.*

While a short title has been deemed preferable, it may be noted that the bill actually provides for both administrative procedure and judicial review.

SEC. 2. DEFINITIONS.—*The definitions apply to the remainder of the bill.*

For the purpose of both simplifying the language of later provisions and achieving greater precision, general terms of administrative law and procedure are defined.

(a) AGENCY.—*The word "agency" is defined by excluding legislative, judicial, and territorial authorities and by including any other "authority" whether or not within or subject to review by another agency. The bill is not to be construed to repeal delegations of authority provided by law. Expressly exempted from the term "agency", except for the public information requirements of section 3, are (1) agencies composed of representatives of parties or of organizations of parties and (2) defined war authorities including civilian authorities functioning under temporary or named statutes operative during "present hostilities."*

The word "authority" is advisedly used as meaning whatever persons are vested with powers to act (rather than the mere form of agency organization such as department, commission, board, or bureau) because the real authorities may be some subordinate or semidependent person or persons within such form of organization. In conferring administrative powers, statutes customarily do not refer to formal agencies (such as the Department of Agriculture) but to specified persons (such as the Secretary of Agriculture). Boards or commissions usually possess authority which does not extend to individual members or to their subordinates.

The bill does not repeal delegations of authority which are duly authorized by existing law. This does not mean, however, that delegations are effective where other provisions of the bill require otherwise. For example, the requirement that examiners in certain instances hear cases would supersede any existing delegations to prosecuting officers to hear such cases.

Agencies composed of representatives of the parties or of organizations of the parties to the disputes determined by them are exempted because such agencies as presently operated do not lend themselves to the adjudicative procedures set out in the remaining sections of the bill. They tend to be arbitral or mediating agencies rather than tribunals.

The exclusion of war functions and agencies, whether exercised by civil or military personnel, affords all necessary freedom of action for the exercise of such functions in the period of reconversion. It has been deemed wise to exempt such functions in view of the fact that they are rarely required to be exercised upon statutory hearing, with which much of the bill is concerned, and the fact that they are rapidly liquidating. It should be noted, however, that even war functions are not exempted from the public information requirement of section 3. "Present hostilities" means those connected with the war brought on at Pearl Harbor in December 1941.

(b) PERSON AND PARTY.—*"Person" is defined to include specified forms of organizations other than agencies. "Party" is defined to include anyone named, or admitted or seeking and entitled to be admitted, as a party in any agency proceeding except that nothing in the subsection is to be construed to prevent an agency from admitting anyone as a party for limited purposes.*

The definition of person includes both individuals and any form of organization but advisedly excludes Federal agencies. The practice of agencies to admit persons as parties in proceedings "for limited purposes" is expressly preserved, but that exception does not authorize

any agency to ignore or prejudice the rights of the true or full parties in any proceeding.

(c) **RULE AND RULE MAKING.**—“Rule” is defined as any agency statement of general applicability designed to implement, interpret, or prescribe law, policy, organization, procedure, or practice requirements. “Rule making” means agency process for the formulation, amendment, or repeal of a rule and includes any prescription for the future of rates, wages, financial structures, etc., etc.

The definition of “rule” is important because it prescribes the kind of operation that is subject to section 4 rather than section 5. The specification of the activities that are involved in rule making is included in order to comprehend them beyond any possible question. They are defined as rules to the extent that, whether of general or particular applicability, they formally prescribe a course of conduct for the future rather than merely pronounce existing rights or liabilities. It should be noted that rule making is exempted from some of the general requirements of sections 7 and 8 relating to the details of hearings and decisions.

(d) **ORDER AND ADJUDICATION.**—“Order” means the final disposition of any matter, other than rule making but including licensing, whether or not affirmative, negative, or declaratory in form. “Adjudication” means the agency process for the formulation of an order.

The term “order” is defined to exclude rules. “Licensing” is specifically included to remove any possible question at the outset. Licenses involve a pronouncement of present rights of named parties although they may also prescribe terms and conditions for future observance. It should be noted, however, that licensing is exempted from some of the provisions of sections 5, 7, and 8 relating to hearings and decisions.

(e) **LICENSE AND LICENSING.**—“License” is defined to include any form of required official permission such as certificate, charter, etc. “Licensing” is defined to include agency process respecting the grant, renewal, modification, denial, revocation, etc., of a license.

This definition supplements subsection (d). Later provisions of the bill distinguish between initial licenses and renewals or other licensing proceedings. A further distinction might have been drawn between licenses for a term, such as radio licenses, and those of indefinite duration, such as certificates of convenience and necessity.

(f) **SANCTION AND RELIEF.**—“Sanction” is defined to include any agency prohibition, withholding of relief, penalty, seizure, assessment, requirement, restriction, etc. “Relief” is defined to include any agency grant, recognition, or other beneficial action.

These definitions are mainly relevant to section 9 on sanctions and powers and to section 10 on judicial review. The purpose of the subsection is to define exhaustively every possible form of legitimate administrative power or authority.

(g) **AGENCY PROCEEDING AND ACTION.**—“Agency proceeding” is defined to mean any agency process defined in the foregoing subsections (c), (d), or (e). For the purpose of section 10 on judicial review, “agency action” is defined to include an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, and failure to act.

The term “agency proceeding” is specially defined in order to simplify the language of subsequent provisions and to assure that all forms of administrative procedure or authority are included. The

term "agency action" brings together previously defined terms in order to simplify the language of the judicial review provisions of section 10 and to assure the complete coverage of every form of agency power, proceeding, action, or inaction.

SEC. 3. PUBLIC INFORMATION.—*From the public information provisions of section 3 there are exempted matters (1) requiring secrecy in the public interest or (2) relating solely to the internal management of an agency.*

The public information requirements of section 3 are in many ways among the most important, far-reaching, and useful provisions of the bill. For the information and protection of the public wherever located, these provisions require agencies to take the mystery out of administrative procedure by stating it. The section has been drawn upon the theory that administrative operations and procedures are public property which the general public, rather than a few specialists or lobbyists, is entitled to know or to have the ready means of knowing with definiteness and assurance.

The introductory clause states the only general exceptions. The first, which excepts matters requiring secrecy in the public interest, is necessary but is not to be construed to defeat the purpose of the remaining provisions. It would include confidential operations in any agency, such as some of the aspects of the investigating or prosecuting functions of the Secret Service or Federal Bureau of Investigation, but no other functions or operations in those or other agencies. Closely related is the second exception, of matters relating solely to internal agency management, which may not be construed to defeat other provisions of the bill or to permit withholding of information as to operations which remaining provisions of the section or of the whole bill require to be public or publicly available.

(a) RULES.—*Every agency is required to publish in the Federal Register its (1) organization, (2) places of doing business with the public, (3) methods of rule making and adjudication including the rules of practice relating thereto, and (4) such substantive rules as it may frame for the guidance of the public. No person is in any manner to be required to resort to organization or procedure not so published.*

Since the bill leaves wide latitude for each agency to frame its own procedures, this subsection requiring agencies to state their organization and procedures in the form of rules is essential for the information of the public. The publication must be kept up to date. The enumerated classes of informational rules must also be separately stated so that, for example, rules of procedure will be separate from rules of substance, interpretation, or policy. The effect of any one of the first three classifications of required rule making is that agencies must also publish their internal delegations of authority. The subsection forbids secrecy of rules binding or applicable to the public, or of delegations of authority. The requirement that no one shall "in any manner" be required to resort to unpublished organization or procedure protects the public from being required to pursue remedies that are not generally known.

(b) OPINIONS AND ORDERS.—*Agencies are required to publish or, pursuant to rule, make available to public inspection all final opinions or orders in the adjudication of cases except those held confidential for good cause and not cited as precedents.*

Rule making results in published material in the Federal Register as set forth in subsection (a), but in the case of adjudication there is no standard, general, and official medium of publication. Some agencies publish sets of some of their decisions, but otherwise the public is not informed as to how and where they may see decisions or consult precedents. Requiring each agency to formulate and publish a rule respecting access to their final opinions and orders will give the general public notice as to how such information may be secured. While the subsection does not mention "rulings"—which are neither rules nor orders but are general interpretations, such as the opinions of agency counsel—if authoritative, they would be covered by the fourth category in subsection (a) of this section.

(c) PUBLIC RECORDS.—*Except as statutes may require otherwise or information may be held confidential for good cause, matters of official record are to be made available to persons properly and directly concerned in accordance with rules to be issued by the agency.*

This provision supplements subsections (a) and (b). The requirement of an agency rule on the availability of official records is inserted for the same purpose as in subsection (b). In many cases, the interest of the person seeking access to the record will be determinative. Agencies should classify data in order to specify what may be disclosed and what may not; and they must in any case provide how and where applications for information may be made, how they will be determined, and who will do so. Refusals of information would be subject to the requirements of section 6 (d).

SEC. 4. RULE MAKING.—*The introductory clause exempts from all of the requirements of section 4 any rule making so far as there are involved (1) military, naval, or foreign affairs functions or (2) matters relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.*

These exceptions would not, of course, relieve any agency from requirements imposed by other statutes. The phrase "foreign affairs functions," used here and in some other provisions of the bill, is not to be loosely interpreted to mean any function extending beyond the borders of the United States but only those "affairs" which so affect relations with other governments that, for example, public rule making provisions would clearly provoke definitely undesirable international consequences. The exception of matters of management or personnel would operate only so far as not inconsistent with other provisions of the bill relating to internal management or personnel. The exception of proprietary matters is included because the principal considerations in most such cases relate to mechanics and interpretations or policy, and it is deemed wise to encourage and facilitate the issuance of rules by dispensing with all mandatory procedural requirements. None of these exceptions, however, is to be taken as encouraging agencies not to adopt voluntary public rule making procedures where useful to the agency or beneficial to the public. The exceptions merely confer a complete discretion upon agencies to decide what, if any, public rule making procedures they will adopt in a given situation within their terms. It should be noted, moreover, that the exceptions apply only "to the extent" that the excepted subjects are directly involved.

(a) NOTICE.—*General notice of proposed rule making must be published in the Federal Register and must include (1) time, place, and*

nature of proceedings, (2) reference to authority under which held, and (3) terms, substance, or issues involved. However, except where notice and hearing is required by some other statute, the subsection does not apply to rules other than those of substance or where the agency for good cause finds (and incorporates the finding and reasons therefor in the published rule) that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.

Agency notice must be sufficient to fairly apprise interested parties of the issues involved, so that they may present responsive data or argument relating thereto. The subsection governs the application of the public procedures required by the next subsection, since those procedures only apply where notice is required by this subsection. Agencies are given discretion to dispense with notice (and consequently with public proceedings) in the case of interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice. This does not mean, however, that agencies should not—where useful to them or helpful to the public—undertake public procedures in connection with such rule making. The exemption of situations of emergency or necessity is not an “escape clause” in the sense that any agency has discretion to disregard its terms or the facts. A true and supported or supportable finding of necessity or emergency must be made and published. “Impracticable” means a situation in which the due and required execution of the agency functions would be unavoidably prevented by its undertaking public rule-making proceedings. “Unnecessary” means unnecessary so far as the public is concerned, as would be the case if a minor or merely technical amendment in which the public is not particularly interested were involved. “Public interest” supplements the terms “impracticable” or “unnecessary”; it requires that public rule-making procedures shall not prevent an agency from operating and that, on the other hand, lack of public interest in rule making warrants an agency to dispense with public procedure. It should be noted that where authority beneficial to the public does not become operative until a rule is issued, the agency may promulgate the necessary rule immediately and rely upon supplemental procedures in the nature of a public reconsideration of the issued rule to satisfy the requirements of this section. Where public rule-making procedures are dispensed with, the provisions of subsections (c) and (d) of this section would nevertheless apply.

(b) PROCEDURES.—*After such notice, the agency must afford interested persons an opportunity to participate in the rule making at least to the extent of submitting written data, views, or argument; and, after consideration of such presentations, the agency must incorporate in any rules adopted a concise general statement of their basis and purpose. However, where other statutes require rules to be made after hearing, the requirements of sections 7 and 8 (relating to public hearings and decisions thereon) apply in place of the provisions of this subsection.*

This subsection states, in its first sentence, the minimum requirements of public rule making procedure short of statutory hearing. Under it agencies might in addition confer with industry advisory committees, consult organizations, hold informal “hearings,” and the like. Considerations of practicality, necessity, and public interest as discussed in connection with subsection (a) will naturally govern the agency’s determination of the extent to which public proceedings

should go. Matters of great import, or those where the public submission of facts will be either useful to the agency or a protection to the public, should naturally be accorded more elaborate public procedures. The agency must analyze and consider all relevant matter presented. The required statement of the basis and purpose of rules issued should not only relate to the data so presented but with reasonable fullness explain the actual basis and objectives of the rule.

(c) EFFECTIVE DATES.—*The required publication or service of any substantive rule must be made not less than 30 days prior to its effective date except (1) as otherwise provided by the agency for good cause found and published or (2) in the case of rules recognizing exemption or relieving restriction, interpretative rules, and statements of policy.*

This subsection does not provide procedures alternative to notice and other public proceedings required by the prior subsections of this section. Nor does it supersede the provisions of subsection (d) of this section. Where public procedures are omitted as authorized in certain cases, subsection (c) does not thereby become inoperative. It will afford persons affected a reasonable time to prepare for the effective date of a rule or rules or to take any other action which the issuance of rules may prompt. While certain named kinds of rules are not necessarily subject to the deferred effective date provided, it does not thereby follow that agencies are required to make such excepted types of rules operative with less notice or no notice but, instead, agencies are given discretion in those cases to fix such future effective date as they may find advisable. The other exception, upon good cause found and published, is not an "escape clause" which may be arbitrarily exercised but requires legitimate grounds supported in law and fact by the required finding. Moreover, the specification of a 30-day deferred effective date is not to be taken as a maximum, since there may be cases in which good administration or the convenience and necessity of the persons subject to the rule reasonably requires a longer period.

(d) PETITIONS.—*Every agency is required to accord any interested person the right to petition for the issuance, amendment, or repeal of a rule.*

This subsection applies not merely to effective rules existing at any time but to proposed or tentative rules. Where the latter are published, agencies should receive petitions for modification because that is one of the purposes of publishing proposed or tentative rules. Where such petitions are made, the agency must fully and promptly consider them, take such action as may be required, and pursuant to section 6 (d) notify the petitioner in case the request is denied. The agency may either grant the petition, undertake public rule making proceedings as provided by subsections (a) and (b) of this section, or deny the petition. The taking or denial of action would have the same effect and consequences as the taking or denial of action where, under presently existing legislation, the equivalent of a right of petition is recognized in interested persons. The mere filing of a petition does not require an agency to grant it, or to hold a hearing, or engage in any other public rule making proceedings. The refusal of an agency to grant the petition or to hold rule making proceedings, therefore, would not per se be subject to judicial reversal. However, the facts or considerations brought to the attention of an agency by such a petition might be such as to require the agency to act to prevent the rule from continuing or becoming vulnerable upon

judicial review, through declaratory judgment or other procedures pursuant to section 10.

SEC. 5. ADJUDICATIONS.—*The various subsequent provisions of section 5 relating to adjudications apply only where the case is otherwise required by statute to be determined upon an agency hearing except that, even in that case, the following classes of operations are expressly not affected: (1) Cases subject to trial de novo in court, (2) selection or tenure of public officers other than examiners, (3) decisions resting on inspections, tests, or elections, (4) military, naval, and foreign affairs functions (5) cases in which an agency is acting for a court, and (6) the certification of employee representatives.*

The general limitation of this section to cases in which other statutes require the agency to act upon or after a hearing is important. All cases are nevertheless subject to sections 2, 3, 6, 9, 10, and 12 so far as those are otherwise relevant.

The numbered exceptions remove from the operation of the section even adjudications otherwise required by statute to be made after hearing. The first, where the adjudication is subject to a judicial trial de novo, is included because whatever judgment the agency makes is effective only in a prima facie sense at most and the party aggrieved is entitled to complete judicial retrial and decision. The second, respecting the selection and tenure of officers other than examiners, is included because the selection and control of public personnel has been traditionally regarded as a discretionary function which, if to be overturned, should be done by separate legislation. The third exempts proceedings resting on inspections, tests, or elections because those methods of determination do not lend themselves to the hearing process. The fourth exempts military, naval, and foreign affairs functions for the same reasons that they are exempted from section 4; and, in any event, rarely if ever do statutes require such functions to be exercised upon hearing. The fifth, exempting cases in which an agency is acting as the agent for a court, is included because the administrative operation is subject to judicial revision in toto. The sixth, exempting the certification of employee representatives such as the Labor Board operations under section 9 (c) of the National Labor Relations Act, is included because these determinations rest so largely upon an election or the availability of an election. It should be noted that these exceptions apply only "to the extent" that the excepted subject is involved and, it may be added, only to the extent that such subjects are directly involved.

(a) **NOTICE.**—*Persons entitled to notice of an agency hearing are to be duly and timely informed of (1) the time, place, and nature of the hearing, (2) the legal authority and jurisdiction under which it is to be held, and (3) the matters of fact and law asserted. Where private persons are the moving parties, respondents must give prompt notice of issues controverted in law or fact; and in other cases the agency may require responsive pleading. In fixing the times and places for hearings the agency must give due regard to the convenience and necessity of the parties.*

The specification of the content of notice, so far as legal authority and the issues are concerned, does not mean that prior to the commencement of the proceedings an agency must anticipate all developments and all possible issues. But it does mean that, either by the formal notice or otherwise in the record, it must appear that the party

affected has had ample notice of the legal and factual issues with due time to examine, consider, and prepare for them. The second sentence of the subsection applies in those cases where the agency does not control the matter of notice because private persons are the moving parties; and in such cases the respondent parties must give notice of the issues of law or fact which they controvert so that the moving party will be apprised of the issues he must sustain. The purpose of the provision is to simplify the issues for the benefit of both the parties and the deciding authority. The last sentence, requiring the convenience and necessity of the parties to be consulted in fixing the times and places for hearings, includes an agency party as well as a private party; but the agency's convenience is not to outweigh that of the private parties and, while the due and required execution of agency functions may be said to be paramount, that consideration would be controlling only where a lack of time has been unavoidable or a particular place of hearing is indispensable and does not deprive the private parties of their full opportunity for a hearing.

(b) PROCEDURE.—*The agency is required first to afford parties an opportunity for the settlement or adjustment of issues (where time, the nature of the proceeding, and the public interest permit) followed, to the extent that issues are not so settled, by hearing and decision under sections 7 and 8.*

The preliminary settlement-by-consent provision of this subsection is of the greatest importance. Such adjustments may go to the whole or any part of any case. The limitation of the requirement to cases in which "time, the nature of the proceeding, and the public interest permit" does not mean that formal proceedings, to the exclusion of prior opportunity for informal settlement, lie in the discretion of any agency irrespective of the facts, legal situation presented, or practical aspects of the case. It does not mean that agencies have an arbitrary choice, or that they may consult their mere preference or convenience. It is intended to exempt only situations in which, for example, (1) time is unavoidably lacking, (2) the nature of the proceeding is such that for example (as in some forms of rule making) the great number of parties or possible parties makes it unlikely that any adjustment could be reached, and (3) the administrative function requires immediate execution in order to protect the tangible and demonstrable requirements of public interest.

(c) SEPARATION OF FUNCTIONS.—*Officers who preside at the taking of evidence must make the decision or recommended decision in the case. They may not consult with any person or party except openly and upon notice, save in the disposition of customary ex parte matters, and they may not be made subject to the supervision of prosecuting officers. The latter may not participate in the decisions except as witness or counsel in public proceedings. However, the subsection is not to apply in determining applications for initial licenses or the past reasonableness of rates; nor does it apply to the top agency or members thereof.*

The gist of the subsection is that no investigating or prosecuting officer shall directly or indirectly in any manner influence or control the operations of hearing and deciding officers, except as a participant in public proceedings, and even then in no different fashion than the private parties or their representatives. "Ex parte matters authorized by law" means passing on requests for adjournments, continuances, filing of papers, and so forth. The exemption of applications

for initial licenses frees from the requirements of the subsection such matters as the granting of certificates of convenience and necessity which are of indefinite duration, upon the theory that in most licensing cases the original application may be much like rule making. The latter, of course, is not subject to any provision of section 5. The exemption of cases involving "the past reasonableness of rates" (if triable *de novo* on judicial review they would be exempted in any event) is made for the same reason. There are, however, some instances of either kind of case which tend to be accusatory in form and involve sharply controverted factual issues. Agencies should not apply the exceptions to such cases, because they are not to be interpreted as precluding fair procedure where it is required.

A further word may be said as to the last exemption—of the agency itself or the members of the board who comprise it. Such a provision is required by the very nature of administrative agencies, where the same authority is responsible for both the investigation-prosecution and the hearing and decision of cases. There, too, the exemption is not to be taken as meaning that the top authority must reserve to itself both prosecuting and deciding functions. To be sure it is ultimately responsible for all functions committed to it, but it may and should confine itself to determining policy and should delegate the actual supervision of investigations and initiation of cases to responsible subordinate officers.

(d) DECLARATORY ORDERS.—*Every agency is authorized in its sound discretion to issue declaratory orders with the same effect as other orders.*

This subsection does not mean that any agency empowered to issue orders may issue declaratory orders, because it is limited by the introductory clauses of section 5. Thus, such orders may be issued only where the agency is empowered by statute to hold hearings and the subject is not expressly exempted by the introductory clauses of this section.

Agencies are not required to issue declaratory orders merely because request is made therefor. Such applications have no greater effect than they now have under existing comparable legislation. "Sound discretion," moreover, would preclude the issuance of improvident orders. The administrative issuance of declaratory orders would be governed by the same basic principles that govern declaratory judgments in the courts.

SEC. 6. ANCILLARY MATTERS.—*The provisions of section 6 relating to incidental or miscellaneous rights, powers, and procedures do not override contrary provisions in other parts of the bill.*

The purpose of this introductory exception, which reads "except as otherwise provided in this act," is to limit, for example, the right of appearance provided in subsection (a) so as not to authorize improper ex parte conferences during formal hearings and pending formal decisions under sections 7 and 8.

(a) APPEARANCE.—*Any person compelled to appear in person before any agency or its representative is entitled to counsel. In other cases, every party may appear in person or by counsel. So far as the responsible conduct of public business permits, any interested person may appear before any agency or its responsible officers at any time for the presentation or adjustment of any matter. Agencies are to proceed with reasonable dispatch to conclude any matter so presented, with due regard for the convenience and necessity of the parties. Nothing in the subsection is to*

be taken as recognizing or denying the propriety of nonlawyers representing parties.

This subsection is designed to confirm and make effective the right of interested persons to appear themselves or through or with counsel before any agency. The word "party" in the second sentence is to be understood as meaning any person showing the requisite interest in the matter, since the subsection applies in connection with the exercise of any agency authority whether or not formal proceedings are available. The phrase "responsible officers", as used here and in some other provisions, both includes all officers or employees who really determine matters or exercise substantial advisory functions and excludes those whose duties are merely formal or mechanical. The third sentence does not require agencies to give notice to all who may be affected, but merely to receive the presentations of those who seek to make them. The qualifying words in the third sentence—which read "so far as the responsible conduct of public business permits"—preclude the undue harassment of agencies by numerous petty appearances by or for the same party in the same case; but they do not confer upon agencies a discretion to emasculate the subsection or preclude interested persons from presenting fully and before any responsible officer or employee their cases or proposals in full. The reference to "stop-order or other summary actions" emphasizes the necessity for an opportunity for full informal appearance where normal and formal hearing and decision requirements are not applicable or are inadequate. The requirement that agencies proceed "with reasonable dispatch to conclude any matter presented" is a statement of legal requirement that no agency shall in effect deny relief or fail to conclude a case by mere inaction.

The final sentence provides that the subsection shall not be taken to recognize or deny the right of nonlawyers to be admitted to practice before any agency, such as the practitioners before the Interstate Commerce Commission. The use of the word "counsel" means lawyers. While the subsection does not deal with the matter expressly, the committee does not believe that agencies are justified in laying burdensome admission requirements upon members of the bar in good standing before the courts. The right of agencies to pass upon the qualifications of nonlawyers, however, is expressly recognized and preserved in the subsection.

(b) INVESTIGATIONS.—*Investigative process is not to be issued or enforced except as authorized by law. Persons compelled to submit data or evidence are entitled to retain or, on payment of costs, to procure copies except that in nonpublic proceedings a witness may for good cause be limited to inspection of the official transcript.*

This section is designed to preclude "fishing expeditions" and investigations beyond the jurisdiction or authority of an agency. It applies to any demand, whether or not a formal subpoena is actually issued. "Nonpublic investigatory proceeding" means those of the grand jury kind in which evidence is taken behind closed doors. The limitation, for good cause, to inspection of the official transcript is deemed necessary where evidence is taken in a case in which prosecutions may be brought later and it is obviously detrimental to the due execution of the laws to permit copies to be circulated. In those cases the witness or his counsel may be limited to inspection of the relevant portions of the transcript. Parties should in any case have

copies or an opportunity for inspection in order to assure that their evidence is correctly set forth, to refresh their memories in the case of stale proceedings, and to enable them to be advised by counsel. They should also have such copies whenever needed in legal or administrative proceedings.

(c) SUBPENAS.—*Where agencies are by law authorized to issue subpoenas, parties may secure them upon request and upon a statement or showing of general relevance and reasonable scope if the agency rules so require. Where a party contests a subpoena, the court is to inquire into the situation and, so far as the subpoena is found in accordance with law, issue an order requiring the production of the evidence under penalty of contempt for failure then to do so.*

This provision will assure private parties the same access to subpoenas as that available to the representatives of agencies. It will also prevent the issuance of improvident subpoenas or action by an agency requiring a detailed, unnecessary, and burdensome showing of evidence which might fall into the hands of the party's adversaries or investigators and prosecutors (who in any event should not have access to such papers directly or indirectly). The subsection constitutes a statutory limitation upon the issuance or enforcement of subpoenas in excess of agency authority or jurisdiction. This does not mean, however, that courts should enter into a detailed examination of facts and issues which are committed to agency authority in the first instance, but should, instead, inquire generally into the legal and factual situation and be satisfied that the agency could possibly find that it has jurisdiction. The subsection expressly recognizes the right of parties subject to administrative subpoenas to contest their validity in the courts prior to subjection to any form of penalty for noncompliance.

(d) DENIALS.—*Prompt notice is to be given of denials of requests in any agency proceeding, accompanied by a simple statement of grounds.*

This subsection affords the parties in any agency proceeding, whether or not formal or upon hearing, the right to prompt action upon their requests, immediate notice of such action, and a statement of the actual grounds therefor. The latter should in any case be sufficient to apprise the party of the basis of the denial and any other or further administrative remedies or recourse he may have. A statement of the actual grounds need not be made "in affirming a prior denial or where the denial is self-explanatory." However, prior denial would satisfy the subsection requirement only where the grounds previously stated remain the actual grounds and sufficiently notify the party as set forth above. A self-explanatory denial must meet the same test; that is, the request must be in such form that its mere denial fully informs the party of all he would otherwise be entitled to have stated.

SEC. 7. HEARINGS.—*Section 7 relating to agency hearings applies only where hearings are required by sections 4 or 5.*

As heretofore stated in connection with sections 4 and 5, the bill requires no hearings unless other statutes contain such a requirement in particular cases of either rule making or adjudication. This section 7, therefore, is merely supplementary to sections 4 or 5 in the relevant cases.

(a) PRESIDING OFFICERS.—*The hearing must be held either by the agency, a member or members of the board which comprises it, one or*

more examiners, or other officers specially provided for in or designated by other statutes. All presiding and deciding officers are to operate impartially. They may at any time withdraw if they deem themselves disqualified and, upon the filing of a proper affidavit of personal bias or disqualification against them, the agency is required to determine the matter as a part of the record and decision in the case.

This subsection provides two mutually exclusive methods of hearing—by the agency itself (or one or more of its members) or by subordinate officers. A third kind of hearing officer recognized in this subsection is one specially provided for or named in other statutes. Whoever presides is subject to the remaining provisions of the bill. They must conduct the hearing in a strictly impartial manner, rather than as the representative of an investigative or prosecuting authority, but this does not mean that they do not have the authority and duty—as a court does—to make sure that all necessary evidence is adduced and to keep the hearing orderly and efficient. The provision for affidavits of bias or personal disqualification requires a decision thereon by the agency in, and as a part of, the case; it thereby becomes subject to administrative and judicial review. That decision might be made upon the affidavit alone, as for example, the protest might be dismissed as insufficient on its face. The agency itself may hear any relevant argument or facts, or it may designate an examiner to do so. The effect which bias or disqualification shown upon the record might have would be determined by the ordinary rules of law and the other provisions of this bill. If it appeared or were discovered late, it would have the effect—where issues of fact or discretion were important and the conduct and demeanor of witnesses relevant in determining them—of rendering the recommended decisions or initial decisions of such officers invalid. This consequence will require agencies and examiners themselves to take care that they do not sit where subject to disqualification or conduct themselves in a manner which will invalidate the proceedings.

(b) *HEARING POWERS.*—*Presiding officers, subject to the rules of procedure adopted by the agency and within its powers, have authority to (1) administer oaths, (2) issue such subpoenas as are authorized by law, (3) receive evidence and rule upon offers of proof, (4) take depositions or cause depositions to be taken, (5) regulate the hearing, (6) hold conferences for the settlement or simplification of the issues, (7) dispose of procedural requests, (8) make decisions or recommended decisions under section 8 of the bill, and (9) exercise other authority as provided by agency rule consistent with the remainder of the bill.*

This subsection does not expand the powers of agencies. It is designed to assure that the presiding officer will perform a real function rather than serve merely as a notary or policeman. He would have and should independently exercise all the powers numbered in the subsection. The agency itself—which must ultimately either decide the case, or consider reviewing it, or hear appeals from the examiner's decision—should not in effect conduct hearings from behind the scenes where it cannot know the detailed happenings in the hearing room and does not hear or see the private parties.

(c) *EVIDENCE.*—*Except as statutes otherwise provide, the proponent of a rule or order has the burden of proof. While any evidence may be received, as a matter of policy agencies are required to provide for the exclusion of irrelevant and unduly repetitious evidence and no sanction*

may be imposed or rule or order be issued except as supported by relevant, reliable, and probative evidence. Any party may present his case or defense by oral or documentary evidence, submit rebuttal evidence, and conduct reasonable cross-examination. However, in the case of rule making or determining applications for initial licenses, the agency may adopt procedures for the submission of evidence in written form so far as the interest of any party will not be prejudiced thereby.

That the proponent of a rule or order has the burden of proof means not only that the party initiating the proceeding has the general burden of coming forward with a prima facie case but that other parties, who are proponents of some different result, also for that purpose have a burden to maintain. Similarly the requirement that no sanction be imposed or rule or order be issued except upon evidence of the kind specified means that the proponents of a denial of relief must sustain such denial by that kind of evidence. For example, credible and credited evidence submitted by the applicant for a license may not be ignored except upon the requisite kind and quality of contrary evidence. No agency is authorized to stand mute and arbitrarily disbelieve credible evidence. Except as applicants for a license or other privilege may be required to come forward with a prima facie showing, no agency is entitled to presume that the conduct of any person or status of any enterprise is unlawful or improper.

The second and primary sentence of the subsection is framed on the theory that an administrative hearing is to be compared with an equity proceeding in the courts. The mere admission of evidence is not to be taken as prejudicial error (there being no lay jury to be protected from improper influence) although irrelevant and unduly repetitious evidence is to be excluded as a matter of efficiency and good practice; and no finding or conclusion may be entered except upon evidence which is plainly of the requisite materiality and competence; that is, "relevant, reliable, and probative evidence." Thus while the exclusionary "rules of evidence" do not apply except as the agency may as a matter of good practice simplify the hearing and record by excluding obviously improper or unnecessary evidence, the standards and principles of probity and reliability of evidence must be the same as those prevailing in courts of law or equity in nonadministrative cases. There are no real rules of probity and reliability even in courts of law, but there are certain standards and principles—usually applied tacitly and resting mainly upon common sense—which people engaged in the conduct of responsible affairs instinctively understand and act upon. They may vary with the circumstances and kind of case, but they exist and must be rationally applied. These principles, under this subsection, are to govern in administrative proceedings.

The right of cross-examination extends, in a proper case, to written evidence submitted pursuant to the last sentence of the subsection as well as to cases in which oral or documentary evidence is received in open hearing. Even in the latter case, subject to the appropriate safeguards, technical data may as a matter of convenience be reduced to writing and introduced as in courts. The written evidence provision of the last sentence of the subsection is designed to cover situations in which, as a matter of general rule or practice, the submission of the whole or substantial portions of the evidence in a case is done in written form. In those situations, however, the provision limits

the practice to specified classes of cases and, even then, only where and to the extent that "the interest of any party will not be prejudiced thereby." To the extent that cross-examination is necessary to bring out the truth, the party should have it. Also, an adequate opportunity must be provided for a party to prepare and submit appropriate rebuttal evidence.

(d) RECORD.—*The record of evidence taken and papers filed is exclusive for decision and, upon payment of costs, is available to the parties. Where decision rests on official notice of a material fact not appearing in the evidence of record, any party may on timely request show the contrary.*

The "official notice" mentioned relates to the administrative practice of taking facts as shown and true though not in the record. This is done by analogy to judicial notice familiar in court procedure. Where agencies take such notice they must so state on the record or in their decisions and then afford the parties an opportunity to show the contrary.

SEC. 8. DECISIONS.—*Section 8 applies to cases in which a hearing is required to be conducted pursuant to section 7.*

Like section 7, upon which section 8 depends, this section is supplementary to sections 4 and 5 in cases in which agency action is required to be taken after hearing provided by statute and not otherwise excepted from the operation of sections 4 or 5.

(a) ACTION BY SUBORDINATES.—*Where the agency has not presided at the reception of the evidence, the presiding officer (or any other officer qualified to preside, in cases exempted from subsec. (c) of sec. 5) must make the initial decision unless the agency—by general rule or in a particular case—undertakes to make the initial decision. If the presiding officer makes the initial decision, it becomes the decision of the agency in the absence of an appeal to the agency or review by the agency on its own motion. On such appeal or review, the agency has all the powers it would have had in making the initial decision. If the agency makes the initial decision without having presided at the taking of the evidence, whatever officer took the evidence must first make a recommended decision except that, in rule making or determining applications for initial licenses, (1) the agency may instead issue a tentative decision or any of its responsible officers may recommend a decision or (2) such intermediate procedure may be wholly omitted in any case in which the agency finds on the record that the execution of its functions imperatively and unavoidably so requires.*

This subsection requires in effect that the officer who presided shall make the initial decision in the case, or the agency may do so, but in the latter event the officer who presided must make a recommended decision. However, the recommended decision may be supplied by a tentative agency decision or a proposed decision by its responsible officers in certain cases or, where the due and timely execution of agency functions will not permit such intermediate action, it may be omitted entirely. The parties might agree to waive such intermediate procedure in any case. The reference to an appeal or review by the agency does not cut off any further appeals to or review by any existing superior agency authorized to hear appeals or review decisions of the first agency. The agency for which the examiner or other presiding officer functions may not dispense with the recommended decision except as provided by the subsection.

The provision that on agency review of initial examiners' decisions the agency shall have all the powers it would have had in making the initial decision does not mean that the initial examiners' decisions (or their recommended decisions) are without effect. They become a part of the record in the case. They would be of consequence, for example, to the extent that material facts in any case depend on the determination of credibility of witnesses as shown by their demeanor or conduct at the hearing. Since the examiner system is made necessary because agencies themselves cannot hear cases, some device must be used to bridge the gap between the officials who hear and those who decide cases.

The alternative intermediate procedure which an agency may adopt in rule making or determining applications for initial licenses lies in the discretion of the agency. In order to simplify the bill, the exception which confers this discretion is broadly drawn. However, it may be noted that even in those cases, if issues of fact are sharply controverted or the case or class of cases tends to become accusatory in nature, sound practice would require the agency to adopt the intermediate recommended decision procedure.

(b) SUBMITTALS AND DECISIONS.—*Prior to each recommended or other decision or review the parties must be given an opportunity to submit for the full consideration of deciding officers (1) proposed findings and conclusions or (2) exceptions to recommended decisions or other decisions being appealed or reviewed, and (3) supporting reasons for such findings, conclusions, or exceptions. All recommended or other decisions become a part of the record and must include (1) findings and conclusions, as well as the basis therefor, upon all the material issues of fact, law, or discretion presented by the record and (2) the appropriate agency action or denial.*

Ordinarily proposed findings and conclusions are submitted only to the officers making the initial decision, and the parties present exceptions thereafter if they contest the result. However, such exceptions may in form or effect include proposed findings or conclusions for the reviewing authority to consider as a part of the exceptions. "Supporting reasons" means that briefs on the law and facts must be received and fully considered by every recommending, deciding, or reviewing officer. They must also hear such oral argument as may be required by law. Where the issues of fact are serious and the case becomes one adversary in character, the agency should provide for oral argument before all recommending, deciding, or reviewing officers at least as a matter of good practice.

The requirement that the agency must state the basis for its findings and conclusions means that such findings and conclusions must be sufficiently related to the record as to advise the parties of their record basis. Most agencies will do so by opinions which reason and relate the issues of fact, law, and discretion. Statements of reasons, however, may be long or short as the nature of the case and the novelty or complexity of the issues may require.

Findings and conclusions must include all the relevant issues presented by the record in the light of the law involved. They may be few or many. A particular conclusion of law may render certain issues and findings immaterial, or vice versa. Where oral testimony is conflicting or subject to doubt of its credibility, the credibility of witnesses would be a necessary finding if the facts are material. It should also be noted that the relevant issues extend to matters of

administrative discretion as well as of law and fact. This is important because agencies often determine whether they have power to act rather than whether their discretion should be exercised or how it should be exercised. Furthermore, without a disclosure of the basis for the exercise of, or failure to exercise, discretion, the parties are unable to determine what other or additional facts they might offer by way of rehearing or reconsideration of decisions.

SEC. 9. SANCTIONS AND POWERS.—*Section 9 relating to powers and sanctions refers to the exercise of any power or authority by an agency.*

Unlike sections 7 and 8, this section applies in all relevant cases, whether or not the agency is required by statute to proceed upon hearing or in any special manner. It also applies to any power or authority that an agency may assume to exercise.

(a) IN GENERAL.—*No sanction may be imposed or substantive rule or order be issued except within the jurisdiction delegated to the agency and as authorized by law.*

This subsection embraces both substantive and procedural requirements of law. It means that agencies may not undertake anything which statutes or other appropriate sources of authority (such as treaties) do not authorize them to do. Where these sources are specific in the authority granted, no additional authority may be assumed. Where these sources are general, no authority beyond the generality granted may be exercised. In particular, agencies may not impose sanctions which have not been specifically or generally provided for them to impose. Thus, an agency which is authorized only to issue cease-and-desist orders may not set up a licensing system; and conversely a licensing authority may not assume to issue desist orders. A rule-making authority may not undertake to adjudicate cases, and vice versa. Of course some statutes confer upon the same agency authority to exercise more than one of these forms of regulation. An agency authorized to regulate trade practices may not regulate banking, and so on. Similarly, no agency may undertake directly or indirectly to exercise the functions of some other agency. The subsection confines each agency to the jurisdiction delegated to it by law.

(b) LICENSES.—*Agencies are required, with due regard for the rights or privileges of all the interested parties or persons adversely affected, to proceed with reasonable dispatch to conclude and decide proceedings on applications for licenses. They are not to withdraw a license without first giving the licensee notice in writing and an opportunity to demonstrate or achieve compliance with all lawful requirements, except in cases of wilfulness or those in which public health, interest, or safety requires otherwise. In businesses of a continuing nature, no license expires until timely applications for new licenses or renewals are determined by the agency.*

This section operates in all cases whether or not hearing is required. The requirement of dispatch means that agencies must proceed as rapidly as is feasible and practicable, rather than at their own convenience. Undue delays are subject to correction by mandatory injunction pursuant to section 10. The exceptions to the second sentence, regarding revocations, apply only where the demonstrable facts fully and fairly warrant the application of the exceptions. Wilfulness must be manifest. The same is true of "public health, interest, or safety." The standard of "public * * * interest"

means a situation requiring immediate action irrespective of the equities or injuries to the licensee, but the term does not confer upon agencies an arbitrary discretion to ignore the requirement of notice and an opportunity to demonstrate compliance. However, this limitation does not apply to temporary permits or temporary licenses.

SEC. 10. JUDICIAL REVIEW.—*Section 10 on judicial review does not apply in any situation so far as there are involved matters with respect to which statutes preclude judicial review or agency action is by law committed to agency discretion.*

Very rarely do statutes withhold judicial review. It has never been the policy of Congress to prevent the administration of its own statutes from being judicially confined to the scope of authority granted or to the objectives specified. Its policy could not be otherwise, for in such a case statutes would in effect be blank checks drawn to the credit of some administrative officer or board.

The basic exception of matters committed to agency discretion would apply even if not stated at the outset. If, for example, statutes are drawn in such broad terms that in a given case there is no law to apply, courts of course have no statutory question to review. That situation cannot be remedied by an administrative procedure act but must be treated by the revision of statutes conferring administrative powers. However, where statutory standards, definitions, or other grants of power deny or require action in given situations or confine an agency within limits as required by the Constitution, then the determination of the facts does not lie in agency discretion but must be supported by either the administrative or judicial record.

(a) RIGHT OF REVIEW.—*Any person suffering legal wrong because of any agency action, or adversely affected within the meaning of any statute, is entitled to judicial review.*

This subsection confers a right of review upon any person adversely affected in fact by agency action or aggrieved within the meaning of any statute. The phrase "legal wrong" means such a wrong as is specified in subsection (c) of this section. It means that something more than mere adverse personal effect must be shown—that is, that the adverse effect must be an illegal effect. The law so made relevant is not just constitutional law but any and all applicable law.

(b) FORM AND VENUE OF ACTION.—*The technical form of proceeding for judicial review is any special proceeding provided by statute or, in the absence or inadequacy thereof, any relevant form of legal action (such as those for declaratory judgments or injunctions) in any court of competent jurisdiction. Moreover, agency action is also made subject to judicial review in any civil or criminal proceeding for enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.*

The first sentence of this subsection is an express statutory recognition of the so-called common-law actions as being appropriate and authorized means of judicial review, operative whenever special forms of judicial review are lacking or insufficient. The declaratory judgment procedure, for example, may be operative before statutory forms of review are available; and in a proper case it may be utilized to determine the validity or application of agency action. The expression "special statutory review" means not only special review proceedings wholly created by statute, but so-called common-law forms referred to and adopted by statute as the appropriate mode of

review. The exception from "prior, adequate, and exclusive * * * review" in the second sentence is operative only where statutes, either expressly or as they are interpreted, require parties to resort to some special statutory form of judicial review which is prior in time and adequate to the case.

(c) REVIEWABLE ACTS.—*Agency action made reviewable specially by statute or final agency action for which there is no other adequate judicial remedy is subject to judicial review. In addition, preliminary or procedural matters not directly subject to review are reviewable upon the review of final actions. Except as statutes may expressly require otherwise, agency action is final whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule) for an appeal to superior agency authority.*

"Final" action includes any effective agency action for which there is no other adequate remedy in any court. "Reconsideration" includes reopening, rehearing, etc.

The last clause, permitting agencies to require by rule that an appeal be taken to superior agency authority before judicial review may be sought, is designed to implement the provisions of section 8 (a). Pursuant to that subsection an agency may permit an examiner to make the initial decision in a case, which becomes the agency's decision in the absence of an appeal to or review by the agency. If there is such review or appeal, the examiner's initial decision becomes inoperative until the agency determines the matter. For that reason this subsection permits an agency also to require by rule that, if any party is not satisfied with the initial decision of a subordinate hearing officer, the party must first appeal to the agency (the decision meanwhile being inoperative) before resorting to the courts. In no case may appeal to "superior agency authority" be required by rule unless the administrative decision meanwhile is inoperative, because otherwise the effect of such a requirement would be to subject the party to the agency action and to repetitious administrative process without recourse. There is a fundamental inconsistency in requiring a person to continue "exhausting" administrative processes after administrative action has become, and while it remains, effective.

(d) INTERIM RELIEF.—*Pending judicial review any agency may postpone the effective date of its action. Upon conditions and as may be necessary to prevent irreparable injury, any reviewing court may postpone the effective date of any agency action or preserve the status quo pending conclusion of review proceedings.*

This section permits either agencies or courts, if the proper showing be made, to maintain the status quo. While it would not permit a court to grant an initial license, it provides intermediate judicial relief for every other situation in order to make judicial review effective. The authority granted is equitable and should be used by both agencies and courts to prevent irreparable injury or afford parties an adequate judicial remedy.

(e) SCOPE OF REVIEW.—*Reviewing courts are required to decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of any agency action. They must (A) compel action unlawfully withheld or unreasonably delayed and (B) hold unlawful any action, findings, or conclusions found to be (1) arbitrary, (2) contrary to the Constitution, (3) contrary to statutes or short of statutory right, (4) without observance of procedure required by law, (5)*

unsupported by substantial evidence upon the administrative record where the agency is authorized by statute to hold hearings subject to sections 7 and 8, or (6) unwarranted by the facts so far as the latter are subject to trial de novo. In making these determinations the court is to consider the whole record or such parts as the parties may cite, and due account must be taken of the rule of prejudicial error.

This subsection provides that questions of law are for courts rather than agencies to decide in the last analysis and it also lists the several categories of questions of law. It expressly recognizes the right of properly interested parties to compel agencies to act where they improvidently refuse to act. "Finding" and "conclusion" also mean failure to find or conclude as the law and the record may require. "Short of statutory right" means that agencies are not authorized to give partial relief where a party demonstrates his right to the whole. "Without observance of procedure required by law" means not only the procedures required by this bill but any other procedures the law may require. "Substantial evidence" means evidence which on the whole record is clearly substantial, sufficient to support a finding or conclusion under section 7 (c), and material to the issues.

The sixth category, respecting the establishment of facts upon trial de novo, would require the reviewing court to determine the facts in any case of adjudication not subject to sections 7 and 8. It would also require the judicial determination of facts in connection with rule making or any other conceivable form of agency action to the extent that the facts were relevant to any pertinent issues of law presented. For example, statutes providing for "reparation orders", in which agencies determine damages and award money judgments, usually state that the money orders issued are merely prima facie evidence in the courts and the parties subject to them are permitted to introduce evidence in the court in which the enforcement action is pending. In other cases, the test is whether there has been a statutory administrative hearing of the facts which is adequate and exclusive for purposes of review. Thus, where adjudications such as tax assessments are not made upon an administrative hearing and record, contests may involve a trial of the facts in the Tax Court or the United States district courts. Where administrative agencies deny parties money to which they are entitled by statute or rule, the claimants may sue as for any other claim and in so doing try out the facts in the Court of Claims or United States district courts as the case may be. Where a court enforces or applies an administrative rule, the party to whom it is applied may offer evidence and show the facts upon which he bases a contention that he is not subject to the terms of the rule. Where for example an affected party claims in a judicial proceeding that a rule issued without an administrative hearing (and not required to be issued after such hearing) is invalid, he may show the facts upon which he predicates such invalidity.

The requirement of review upon "the whole record" means that courts may not look only to the case presented by one party, since other evidence may weaken or even indisputably destroy that case. The requirement that account shall be taken "of the rule of prejudicial error" means that a procedural omission which has been cured by affording the party the procedure to which he was originally entitled is not a reversible error.

SEC. 11. EXAMINERS.—*Subject to the civil-service and other laws not inconsistent with this bill, agencies are required to appoint such examiners*

as may be necessary for proceedings under sections 7 and 8, who are to be assigned to cases in rotation so far as practicable and to perform no inconsistent duties. They are removable only for good cause determined by the Civil Service Commission after opportunity for hearing and upon the record thereof. They are to receive compensation prescribed by the Commission independently of agency recommendations or ratings. One agency may, with the consent of another and upon selection by the Commission, borrow examiners from another. The Commission is given the necessary powers to operate under this section.

That examiners be "qualified and competent" requires the Civil Service Commission to fix appropriate qualifications and the agencies to seek fit persons. In view of the tenure and compensation requirements of the section, designed to make examiners largely independent, self-interest and due concern for the proper performance of public functions will inevitably move agencies to secure the highest type of examiners.

The purpose of this section is to render examiners independent and secure in their tenure and compensation. The section thus takes a different ground than the present situation, in which examiners are mere employees of an agency, and other proposals for a completely separate "examiners' pool" from which agencies might draw for hearing officers. Recognizing that the entire tradition of the Civil Service Commission is directed toward security of tenure, it seems wise to put that tradition to use in the present case. However, additional powers are conferred upon the Commission. It must afford any examiner an opportunity for a hearing before acceding to an agency request for removal, and even then its action would be subject to judicial review. The hearing and decision would be made under sections 7 and 8 of this bill. The requirement of assignment of examiners "in rotation" prevents an agency from disfavoring an examiner by rendering him inactive.

In the matter of examiners' compensation the section adds greatly to the Commission's powers and function. It must prescribe and adjust examiners' salaries, independently of agency ratings and recommendations. The stated inapplicability of specified sections of the Classification Act carries into effect that authority. The Commission would exercise its powers by classifying examiners' positions and, upon customary examination through its agents, shift examiners to superior classifications or higher grades as their experience and duties may require. The Commission might consult the agency, as it now does in setting up positions or reclassifying positions, but it would act upon its own responsibility and with the objects of the bill in mind.

SEC. 12. CONSTRUCTION AND EFFECT.—*Nothing in the bill is to diminish constitutional rights or limit or repeal additional requirements of law. Requirements of evidence and procedure are to apply equally to agencies and private persons except as otherwise provided by law. The unconstitutionality of any portion or application of the bill is not to affect other portions or applications. Agencies are granted all authority necessary to comply with the bill. Subsequent legislation is not to modify the bill except as it may do so expressly. The bill would become law three months after its approval except that sections 7 and 8 take effect six months after approval, the requirements of section 11 become effective a year after approval, and no requirement is mandatory as to any agency proceeding initiated prior to the effective date of such requirement.*

The word "initiated" in the final clause of the section means a proceeding formally begun as by the issuance of a complaint by the agency (irrespective of prior charges or investigations) or of notice of a rule-making hearing. As to new cases, the effective dates provided in section 12 are deferred longer so far as sections 7 and 8 are concerned in order to afford agencies ample time to prepare and make any adjustments required in their procedures. The selection of examiners under section 11 is deferred for a year in order to permit present military service personnel an opportunity to qualify for these positions.

V. GENERAL COMMENTS

The bill is designed to operate as a whole and, as previously stated, its provisions are interrelated. At the same time, however, there are certain provisions which touch on subjects long regarded as of the highest importance. On those subjects, such as the separation of examiners from the agencies they serve, there has been a wide divergence of views. The committee has in such cases taken the course which it believes will suffice without being excessive. Moreover, amendatory or supplementary legislation can supply any deficiency which experience discloses in those cases. The committee believes that special note should be made of the following situations:

The exemption of rule making and determining initial applications for licenses from provisions of sections 5 (c), 7 (c), and 8 (a) may require change if, in practice, it develops that they are too broad. Earlier in this report, in commenting upon some of those provisions, the committee has expressed its reasons for the language used and has stated that, where cases present sharply contested issues of fact, agencies should not as a matter of good practice take advantage of the exemptions.

Should the preservation in section 7 (a) of the "conduct of specified classes of proceedings in whole or part by or before boards or other officers specially provided for by or designated pursuant to statute" prove to be a loophole for avoidance of the examiner system in any real sense, corrective legislation would be necessary. That provision is not intended to permit agencies to avoid the use of examiners but to preserve special statutory types of hearing officers who contribute something more than examiners could contribute and at the same time assure the parties fair and impartial procedure.

The basic provision respecting evidence in section 7 (c)—requiring that any agency action must be supported by plainly "relevant, reliable, and probative evidence"—will require full compliance by agencies and diligent enforcement by reviewing courts. Should that language prove insufficient to fix and maintain the standards of proof, supplemental legislation will become necessary.

The "substantial evidence" rule set forth in section 10 (e) is exceedingly important. As a matter of language, substantial evidence would seem to be an adequate expression of law. The difficulty comes about in the practice of agencies to rely upon (and of courts to tacitly approve) something less—to rely upon suspicion, surmise, implications, or plainly incredible evidence. It will be the duty of the courts to determine in the final analysis and in the exercise of their independent judgment, whether on the whole record the evidence in a given instance is sufficiently substantial to support a finding, conclusion, or other agency action as a matter of law. In

the first instance, however, it will be the function of the agency to determine the sufficiency of the evidence upon which it acts—and the proper performance of its public duties will require it to undertake this inquiry in a careful and dispassionate manner. Should these objectives of the bill as worded fail, supplemental legislation will be required.

The foregoing are by no means all the provisions which will require vigilant attention to assure their proper operation. Almost any provision of the bill, if wrongly interpreted or minimized, may present occasion for supplemental legislation. On the other hand, should it appear at any time that the requirements result in some undue impairment of a particular administrative function, appropriate amendments or exceptions may be in order.

INTERPRETATION AND ENFORCEMENT.—Except in a few respects, this is not a measure conferring administrative powers but is one laying down definitions and stating limitations. These definitions and limitations must, to be sure, be interpreted and applied by agencies affected by them in the first instance. But the enforcement of the bill, by the independent judicial interpretation and application of its terms, is a function which is clearly conferred upon the courts in the final analysis.

It will thus be the duty of reviewing courts to prevent avoidance of the requirements of the bill by any manner or form of indirection, and to determine the meaning of the words and phrases used. For example, in several provisions the expression "good cause" is used. The cause so specified must be interpreted by the context of the provision in which it is found and the purpose of the entire section and bill. Cause found must be real and demonstrable. If the agency is proceeding upon a statutory hearing and record, the cause will appear there; otherwise it must be such that the agency may show the facts and considerations warranting the finding in any proceeding in which the finding is challenged. The same would be true in the case of findings other than of good cause, required in the bill. As has been said, these findings must in the first instance be made by the agency concerned but, in the final analysis, their propriety in law and on the facts must be sustainable upon inquiry by a reviewing court.

Nevertheless, in the nature of things, for most practical purposes it is to the agencies that the Congress and the people must look for fair administration of the laws and compliance with this bill. Judicial review is of utmost importance, but it can be operative in relatively few cases because of the cost and general hazards of litigation. It is indispensable since its mere existence generally precludes the arbitrary exercise of powers or assumption of powers not granted. Yet, in the vast majority of cases the agency concerned usually speaks the first and last word. For that reason the agencies must make the first, primary, and most far-reaching effort to comply with the terms and the spirit of this bill.

It is the view of the committee that this bill is not an indictment of administrative agencies or administrative processes. The committee takes no position one way or the other on these questions. By enacting this bill, the Congress—expressing the will of the people—will be laying down for the guidance of all branches of the Government and all private interests in the country a policy respecting the minimum requirements of fair administrative procedure.

The committee recommends that the bill as reported be enacted.

APPENDIXES

APPENDIX A

That this Act may be cited as the "Administrative Procedure Act".

DEFINITIONS

SEC. 2. As used in this Act—

(a) **AGENCY.**—"Agency" means each authority (whether or not within or subject to review by another agency) of the Government of the United States other than Congress, the courts, or the governments of the possessions, Territories, or the District of Columbia. Nothing in this Act shall be construed to repeal delegations of authority as provided by law. Except as to the requirements of section 3, there shall be excluded from the operation of this Act (1) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them, (2) courts martial and military commissions, (3) military or naval authority exercised in the field in time of war or in occupied territory, or (4) functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947, and the functions conferred by the following statutes: Selective Training and Service Act of 1940; Contract Settlement Act of 1944; Surplus Property Act of 1944.

(b) **PERSON AND PARTY.**—"Person" includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies. "Party" includes any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any agency proceeding; but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes.

(c) **RULE AND RULE MAKING.**—"Rule" means the whole or any part of any agency statement of general applicability designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of any agency. "Rule making" means agency process for the formulation, amendment, or repeal of a rule and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances, therefor, or of valuations, costs, or accounting, or practices bearing upon any of the foregoing.

(d) **ORDER AND ADJUDICATION.**—"Order" means the whole or any part of the final disposition (whether affirmative, negative, or declaratory in form) of any agency in any matter other than rule making but including licensing. "Adjudication" means agency process for the formulation of an order.

(e) **LICENSE AND LICENSING.**—"License" includes the whole or part of any agency permit, certificate, approval, registration, charter, membership, statutory exemption, or other form of permission. "Licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license.

(f) **SANCTION AND RELIEF.**—"Sanction" includes the whole or part of any agency (1) prohibition, requirement, limitation, or other condition affecting the freedom of any person; (2) withholding of relief; (3) imposition of any form of penalty or fine; (4) destruction, taking, seizure, or withholding of property; (5) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees; (6) requirement, revocation, or suspension of a license; or (7) taking of other compulsory or restrictive action. "Relief" includes the whole or part of any agency (1) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy; (2) recognition of any claim, right, immunity, privilege, exemption, or exception; or (3) taking of any other action beneficial to any person.

(g) **AGENCY PROCEEDING AND ACTION.**—"Agency proceeding" means any agency process as defined in subsections (c), (d), and (e) of this section. For the purposes of section 10, "agency action" includes the whole or part of every agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.

PUBLIC INFORMATION

SEC. 3. Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of an agency—

(a) **RULES.**—Every agency shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organization; (2) the established places and methods whereby the public may secure information or make submissions or requests; (3) statements of the general course and method by which its rule making and adjudicating functions are channeled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations; and (4) substantive rules adopted as authorized by law and statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public. No person shall in any manner be required to resort to organization or procedure not so published.

(b) **OPINIONS AND ORDERS.**—Every agency shall publish or, in accordance with published rule, make available to public inspection all final opinions or orders in the adjudication of cases except those required for good cause to be held confidential and not cited as precedents.

(c) **PUBLIC RECORDS.**—Save as otherwise required by statute, matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found.

RULE MAKING

SEC. 4. Except to the extent that there is involved (1) any military, naval, or foreign affairs function of the United States or (2) any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts—

(a) **NOTICE.**—General notice of proposed rule making shall be published in the Federal Register and shall include (1) a statement of the time, place, and nature of public rule making proceedings; (2) reference to the authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved. Except where notice or hearing is required by statute, this subsection shall not apply to interpretative rules, general statements of policy, rules of agency organization, procedure, or practice, or in any situation in which the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(b) **PROCEDURES.**—After notice required by this section, the agency shall afford interested persons an opportunity to participate in the rule making through submission of written data, views, or argument with or without opportunity to present the same orally in any manner; and, after consideration of all relevant matter presented, the agency shall incorporate in any rules adopted a concise general statement of their basis and purpose. Where rules are required by law to be made upon the record after opportunity for or upon an agency hearing, the requirements of sections 7 and 8 shall apply in place of the provisions of this subsection.

(c) **EFFECTIVE DATES.**—The required publication or service of any substantive rule (other than one granting or recognizing exemption or relieving restriction or interpretative rules and statements of policy) shall be made not less than thirty days prior to the effective date thereof except as otherwise provided by the agency upon good cause found and published with the rule.

(d) **PETITIONS.**—Every agency shall accord any interested person the right to petition for the issuance, amendment, or repeal of a rule.

ADJUDICATION

SEC. 5. In every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved (1) any matter subject to a subsequent trial of the law and the facts de novo in any court; (2) the selection or tenure of an officer or employee of the United States other than examiners appointed pursuant to section 11; (3) proceedings in which decisions rest solely on inspections, tests, or elections; (4) the conduct of military, naval, or foreign affairs functions; (5) cases in which an agency is acting as an agent for a court; and (6) the certification of employee representatives—

(a) **NOTICE.**—Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, and nature thereof; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) the matters of fact and law asserted.

In instances in which private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the times and places for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(b) *PROCEDURE.*—The agency shall afford all interested parties opportunity for (1) the submission and consideration of facts, argument, offers of settlement, or proposals of adjustment where time, the nature of the proceeding, and the public interest permit, and (2) to the extent that the parties are unable so to determine any controversy by consent, hearing and decision upon notice and in conformity with sections 7 and 8.

(c) *SEPARATION OF FUNCTIONS.*—The same officers who preside at the reception of evidence pursuant to section 7 shall make the recommended decision or initial decision required by section 8 except where such officers become unavailable to the agency. Save to the extent required for the disposition of ex parte matters as authorized by law, no such officer shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate; nor shall such officer be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency. No officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency in any case shall, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 8 except as witness or counsel in public proceedings. This subsection shall not apply in determining applications for initial licenses or the past reasonableness of rates; nor shall it be applicable in any manner to the agency or any member or members of the body comprising the agency.

(d) *DECLARATORY ORDERS.*—The agency is authorized in its sound discretion, with like effect as in the case of other orders, to issue a declaratory order to terminate a controversy or remove uncertainty.

ANCILLARY MATTERS

SEC. 6. Except as otherwise provided in this Act—

(a) *APPEARANCE.*—Any person compelled to appear in person before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel, or if permitted by the agency, by other qualified representative. Every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in any agency proceeding. So far as the responsible conduct of public business permits, any interested person may appear before any agency or its responsible officers or employees for the presentation, adjustment, or determination of any issue, request, or controversy in any proceeding or in connection with any agency function, including stop-order or other summary actions. Every agency shall proceed with reasonable dispatch to conclude any matter presented to it except that due regard shall be had for the convenience and necessity of the parties or their representatives. Nothing herein shall be construed either to grant or to deny to any person who is not a lawyer the right to appear for or represent others before any agency or in any agency proceeding.

(b) *INVESTIGATIONS.*—No process, requirement of a report, inspection, or other investigative act or demand shall be issued, made, or enforced in any manner or for any purpose except as authorized by law. Every person compelled to submit data or evidence shall be entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

(c) *SUBPENAS.*—Agency subpoenas authorized by law shall be issued to any party upon request and, as may be required by rules of procedure, upon a statement or showing of general relevance and reasonable scope of the evidence sought. Upon contest the court shall sustain any such subpoena or similar process or demand to the extent that it is found to be in accordance with law and, in any proceeding for enforcement, shall issue an order requiring the appearance of the witness or the production of the evidence or data under penalty of punishment for contempt in case of contumacious failure to do so.

(d) *DENIALS.*—Prompt notice shall be given of the denial in whole or in part of any written application, petition, or other request of any interested person made in connection with any agency proceeding. Except in affirming a prior denial or where the denial is self-explanatory, such notice shall be accompanied by a simple statement of grounds.

HEARINGS

SEC. 7. In hearings which section 4 or 5 requires to be conducted pursuant to this section—

(a) **PRESIDING OFFICERS.**—There shall preside at the taking of evidence (1) the agency, (2) one or more members of the body which comprises the agency, or (3) one or more examiners appointed as provided in this Act; but nothing in this Act shall be deemed to supersede the conduct of specified classes of proceedings in whole or part by or before boards or other officers specially provided for by or designated pursuant to statute. The functions of all presiding officers and of officers participating in decisions in conformity with section 8 shall be conducted in an impartial manner. Any such officer may at any time withdraw if he deems himself disqualified; and, upon the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification of any such officer, the agency shall determine the matter as a part of the record and decision in the case.

(b) **HEARING POWERS.**—Officers presiding at hearings shall have authority, subject to the published rules of the agency and within its powers, to (1) administer oaths and affirmations, (2) issue subpoenas authorized by law, (3) rule upon offers of proof and receive relevant evidence, (4) take or cause depositions to be taken whenever the ends of justice would be served thereby, (5) regulate the course of the hearing, (6) hold conferences for the settlement or simplification of the issues by consent of the parties, (7) dispose of procedural requests or similar matters, (8) make decisions or recommend decisions in conformity with section 8, and (9) take any other action authorized by agency rule consistent with this Act.

(c) **EVIDENCE.**—Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. Any evidence, oral or documentary, may be received, but every agency shall as a matter of policy provide for the exclusion of immaterial and unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except as supported by relevant, reliable, and probative evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses any agency may, where the interest of any party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(d) **RECORD.**—The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision in accordance with section 8 and upon payment of lawfully prescribed costs, shall be made available to the parties. Where any agency decision rests on official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the contrary.

DECISIONS

SEC. 8. In cases in which a hearing is required to be conducted in conformity with section 7—

(a) **ACTION BY SUBORDINATES.**—In cases in which the agency has not presided at the reception of the evidence, the officer who presided (or, in cases not subject to subsection (c) of section 5, any other officer or officers qualified to preside at hearings pursuant to section 7) shall initially decide the case or the agency shall require (in specific cases or by general rule) the entire record to be certified to it for initial decision. Whenever such officers make the initial decision and in the absence of either an appeal to the agency or review upon motion of the agency within time provided by rule, such decision shall without further proceedings then become the decision of the agency. On appeal from or review of the initial decisions of such officers the agency shall, except as it may limit the issues upon notice or by rule, have all the powers which it would have in making the initial decision. Whenever the agency makes the initial decision without having presided at the reception of the evidence, such officers shall first recommend a decision except that in rule making or determining applications for initial licenses (1) in lieu thereof the agency may issue a tentative decision or any of its responsible officers may recommend a decision or (2) any such procedure may be omitted in any case in which the agency finds upon the record that due and timely execution of its function imperatively and unavoidably so requires.

(b) **SUBMITTALS AND DECISIONS.**—Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or

(2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings or conclusions. All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the basis therefor, upon all the material issues of fact, law, or discretion presented; and (2) the appropriate rule, order, sanction, relief, or denial thereof.

SANCTIONS AND POWERS

SEC. 9. *In the exercise of any power or authority—*

(a) *IN GENERAL.*—No sanction shall be imposed or substantive rule or order be issued except within jurisdiction delegated to the agency and as authorized by law.

(b) *LICENSES.*—In any case in which application is made for a license required by law the agency, with due regard to the rights or privileges of all the interested parties or adversely affected persons and with reasonable dispatch, shall set and complete any proceedings required to be conducted pursuant to sections 7 and 8 of this Act or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, no withdrawal, suspension, revocation, or annulment of any license shall be lawful unless, prior to the institution of agency proceedings therefor, facts or conduct which may warrant such action shall have been called to the attention of the licensee by the agency in writing and the licensee shall have been accorded opportunity to demonstrate or achieve compliance with all lawful requirements. In any case in which the licensee has, in accordance with agency rules, made timely and sufficient application for renewal or a new license, no license with reference to any activity of a continuing nature shall expire until such application shall have been finally determined by the agency.

JUDICIAL REVIEW

SEC. 10. *Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—*

(a) *RIGHT OF REVIEW.*—Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

(b) *FORM AND VENUE OF ACTION.*—The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. Agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.

(c) *REVIEWABLE ACTS.*—Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. Except as otherwise expressly required by statute, agency action shall be final whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule) for an appeal to superior agency authority.

(d) *INTERIM RELIEF.*—Pending judicial review any agency is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, every reviewing court (including every court to which a case may be taken on appeal from or upon application for certiorari or other writ to a reviewing court) is authorized to issue all necessary and appropriate process to postpone the effective date of any agency action or to preserve status or rights pending conclusion of the review proceedings.

(e) *SCOPE OF REVIEW.*—So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial

evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by the parties, and due account shall be taken of the rule of prejudicial error.

EXAMINERS

SEC. 11. Subject to the civil-service and other laws to the extent not inconsistent with this Act, there shall be appointed by and for each agency as many qualified and competent examiners as may be necessary for proceedings pursuant to sections 7 and 8, who shall be assigned to cases in rotation so far as practicable and shall perform no duties inconsistent with their duties and responsibilities as examiners. Examiners shall be removable by the agency in which they are employed only for good cause established and determined by the Civil Service Commission (hereinafter called the Commission) after opportunity for hearing and upon the record thereof. Examiners shall receive compensation prescribed by the Commission independently of agency recommendations or ratings and in accordance with the Classification Act of 1923, as amended, except that the provisions of paragraphs (2) and (3) of subsection (b) of section 7 of said Act, as amended, and the provisions of section 9 of said Act, as amended, shall not be applicable. Agencies occasionally or temporarily insufficiently staffed may utilize examiners selected by the Commission from and with the consent of other agencies. For the purposes of this section, the Commission is authorized to make investigations, require reports by agencies, issue reports, including an annual report to the Congress, promulgate rules, appoint such advisory committees as may be deemed necessary, recommend legislation, subpoena witnesses or records, and pay witness fees as established for the United States courts.

CONSTRUCTION AND EFFECT

SEC. 12. Nothing in this Act shall be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. If any provision of this Act or the application thereof is held invalid, the remainder of this Act or other applications of such provision shall not be affected. Every agency is granted all authority necessary to comply with the requirements of this Act through the issuance of rules or otherwise. No subsequent legislation shall be held to supersede or modify the provisions of this Act except to the extent that such legislation shall do so expressly. This Act shall take effect three months after its approval except that sections 7 and 8 shall take effect six months after such approval, the requirement of the selection of examiners pursuant to section 11 shall not become effective until one year after such approval, and no procedural requirement shall be mandatory as to any agency proceeding initiated prior to the effective date of such requirement.

APPENDIX B

OCTOBER 19, 1945.

HON. PAT McCARRAN,
Chairman, Senate Judiciary Committee,
United States Senate, Washington, D. C.

MY DEAR SENATOR: You have asked me to comment on S. 7, a bill to improve the administration of justice by prescribing fair administrative procedure, in the form in which it appears in the revised committee print issued October 5, 1945.

I appreciate the opportunity to comment on this proposed legislation.

For more than a decade there has been pending in the Congress legislation in one form or another designed to deal horizontally with the subject of administrative procedure, so as to overcome the confusion which inevitably has resulted from leaving to basic agency statutes the prescription of the procedures to be followed or, in many instances, the delegation of authority to agencies to prescribe their own procedures. Previous attempts to enact general procedural legislation have been unsuccessful generally because they failed to recognize the significant and inherent differences between the tasks of courts and those of administrative agencies or because, in their zeal for simplicity and uniformity, they proposed too narrow and rigid a mold.

Nevertheless, the goal toward which these efforts have been directed is, in my opinion, worth while. Despite difficulties of draftsmanship, I believe that overall procedural legislation is possible and desirable. The administrative process is

now well developed. It has been subject in recent years to the most intensive and informed study—by various congressional committees, by the Attorney General's Committee on Administrative Procedure, by organizations such as the American Bar Association, and by many individual practitioners and legal scholars. We have in general—as we did not have until fairly recently—the materials and facts at hand. I think the time is ripe for some measure of control and prescription by legislation. I cannot agree that there is anything inherent in the subject of administrative procedure, however complex it may be, which defies workable codification.

Since the original introduction of S. 7, I understand that opportunity has been afforded to public and private interests to study its provisions and to suggest amendments. The agencies of the Government primarily concerned have been consulted and their views considered. In particular, I am happy to note that your committee and the House Committee on the Judiciary, in an effort to reconcile the views of the interested parties, have consulted officers of this Department and experts in administrative law made available by this Department.

The revised committee print issued October 5, 1945, seems to me to achieve a considerable degree of reconciliation between the views expressed by the various Government agencies and the views of the proponents of the legislation. The bill in its present form requires administrative agencies to publish or make available to the public an increased measure of information concerning their organization, functions, and procedures. It gives to that portion of the public which is to be affected by administrative regulations an opportunity to express its views before the regulations become effective. It prescribes, in instances in which existing statutes afford opportunity for hearing in connection with the formulation and issuance of administrative rules and orders, the procedures which shall govern such hearings. It provides for the selection of hearing officers on a basis designed to obtain highly qualified and impartial personnel and to insure their security of tenure. It also restates the law governing judicial review of administrative action.

The bill appears to offer a hopeful prospect of achieving reasonable uniformity and fairness in administrative procedures without at the same time interfering unduly with the efficient and economical operation of the Government. Insofar as possible, the bill recognizes the needs of individual agencies by appropriate exemption of certain of their functions.

After reviewing the committee print, therefore, I have concluded that this Department should recommend its enactment.

My conclusion as to the workability of the proposed legislation rests on my belief that the provisions of the bill can and should be construed reasonably and in a sense which will fairly balance the requirements and interests of private persons and governmental agencies. I think it may be advisable for me to attach to this report an appendix discussing the principal provisions of the bill. This may serve to clarify some of the essential issues and may assist the committee in evaluating the impact of the bill on public and private interests.

I am advised by the Acting Director of the Bureau of the Budget that while there would be no objection to the submission of this report, he questions the appropriateness of the inclusion of the words "independently of agency recommendations or ratings," appearing after the words "Examiners shall receive compensation prescribed by the [Civil Service] Commission," in section 11 of the bill inasmuch as he deems it highly desirable that agency recommendations and ratings be fully considered by the Commission.

With kind personal regards,

Sincerely yours,

TOM C. CLARK, *Attorney General.*

APPENDIX TO ATTORNEY GENERAL'S STATEMENT REGARDING REVISED COMMITTEE PRINT OF OCTOBER 5, 1945

Section 2: The definitions given in section 2 are of very broad character. It is believed, however, that this scope of definition will not be found to have any unexpected or unfortunate consequences in particular cases, inasmuch as the operative sections of the act are themselves carefully limited.

"Courts" includes The Tax Court, Court of Customs and Patent Appeals, the Court of Claims, and similar courts. This act does not apply to their procedure nor affect the requirement of resort thereto.

In section 2 (a) the words "agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by

them" are intended to refer to the following, among others: National War Labor Board and the National Railroad Adjustment Board.

In section 2 (c) the phrase "the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances," etc., is not, of course, intended to be an exhaustive enumeration of the types of subject matter of rule making. Specification of these particular subjects is deemed desirable, however, because there is no unanimity of recognition that they are, in fact, rule making. The phrase "for the future" is designed to differentiate, for example, between the process of prescribing rates for the future and the process of determining the lawfulness of rates charged in the past. The latter, of course, is "adjudication" and not "rule making." (*Arizona Grocery Co. v. Atchison, Topeka and Santa Fe Railway Co.*, 284 U. S. 370.)

The definitions of "rule making" and "adjudication," set forth in subsections (c) and (d) of section 2, are especially significant. The basic scheme underlying this legislation is to classify all administrative proceedings into these two categories. The pattern is familiar to those who have examined the various proposals for administrative procedure legislation which have been introduced during the past few years; it appears also in the recommendations of the Attorney General's Committee on Administrative Procedure. Proceedings are classed as rule making under this act not merely because, like the legislative process, they result in regulations of general applicability but also because they involve subject matter demanding judgments based on technical knowledge and experience. As defined in subsection (c), for example, rule making includes not only the formulation of rules of general applicability but also the formulation of agency action whether of general or particular applicability, relating to the types of subject matter enumerated in subsection (c). In many instances of adjudication, on the other hand, the accusatory element is strong, and individual compliance or behavior is challenged; in such cases, special procedural safeguards should be provided to insure fair judgments on the facts as they may properly appear of record. The statute carefully differentiates between these two basically different classes of proceedings so as to avoid, on the one hand, too cumbersome a procedure and to require, on the other hand, an adequate procedure.

Section 3: This section applies to all agencies covered by the act, including war agencies and war functions. The exception of any function of the United States requiring secrecy in the public interest is intended to cover (in addition to military, naval, and foreign affairs functions) the confidential operations of the Secret Service, the Federal Bureau of Investigation, United States attorneys, and other prosecuting agencies, as well as the confidential functions of any other agency.

Section 3 (a), by requiring publication of certain classes of information in the Federal Register, is not intended to repeal the Federal Register Act (44 U. S. C. 301 et seq.) but simply to require the publication of certain additional material.

Section 3 (a) (4) is intended to include (in addition to substantive rules) only such statements of general policy or interpretations as the agency believes may be formulated with a sufficient degree of definiteness and completeness to warrant their publication for the guidance of the public.

Section 3 (b) is designed to make available all final opinions or orders in the adjudication of cases. Even here material may be held confidential if the agency finds good cause. This confidential material, however, should not be cited as a precedent. If it is desired to rely upon the citation of confidential material, the agency should first make available some abstract of the confidential material in such form as will show the principles relied upon without revealing the confidential facts.

Section 3 (c) is not intended to open up Government files for general inspection. What is intended is that the agencies, to the degree of specificity practicable, shall classify its material in terms of whether or not it is confidential in character and shall set forth in published rules the information or type of material which is confidential and that which is not.

Section 4. The term "naval" in the first exception clause is intended to include the defense functions of the Coast Guard and the Bureau of Marine Inspection and Navigation.

Section 4 (b), in requiring the publication of a concise general statement of the basis and purpose of rules made without formal hearing, is not intended to require an elaborate analysis of rules or of the detailed considerations upon which they are based but is designed to enable the public to obtain a general idea of the purpose of, and a statement of the basic justification for, the rules. The requirement would also serve much the same function as the whereas clauses which are now customarily found in the preambles of Executive orders.

Section 4 (c): This subsection is not intended to hamper the agencies in cases in which there is good cause for putting a rule into effect immediately, or at some time earlier than 30 days. The section requires, however, that where an earlier effective date is desired the agency should make a finding of good cause therefor and publish its finding along with the rule.

Section 4 (d) simply permits any interested person to petition an agency for the issuance, amendment, or repeal of a rule. It requires the reception and consideration of petitions but does not compel an agency to undertake any rule-making procedure merely because a petition is filed.

Section 5: Subject to the six exceptions set forth at the commencement of the section, section 5 applies to administrative adjudications "required by statute to be determined on the record after opportunity for an agency hearing." It is thus limited to cases in which the Congress has specifically required a certain type of hearing. The section has no application to rule making, as defined in section 2 (e). The section does apply, however, to licensing, with the exception that section 5 (e), relating to the separation of functions, does not apply in determining applications for initial licenses, i. e., original licenses as contradistinguished from renewals or amendments of existing licenses.

If a case falls within one of the six exceptions listed at the opening of section 5, no provision of section 5 has any application to that case; such a case would be governed by the requirements of other existing statutes.

The first exception is intended to exempt, among other matters, certain types of reparation orders assessing damages, such as are issued by the Interstate Commerce Commission and the Secretary of Agriculture, since such orders are admissible only as prima facie evidence in court upon attempted enforcement proceedings or (at least in the case of reparation orders issued by the Secretary of Agriculture under the Perishable Agricultural Commodities Act) on the appeal of the losing party. Reparation orders involving in part an administrative determination of the reasonableness of rates in the past so far as they are not subject to trial de novo would be subject to the provisions of section 5 generally, but they have been specifically exempted from the segregation provisions of section 5 (e). In the fourth exception, the term "naval" is intended to include adjudicative defense functions of the Coast Guard and the Bureau of Marine Inspection and Navigation, where such functions pertain to national defense.

Section 5 (a) is intended to state minimum requirements for the giving of notice to persons who under existing law are entitled to notice of an agency hearing in a statutory adjudication. While in most types of proceedings all of the information required to be given in clauses (1), (2), and (3) may be included in the "notice of hearing" or other moving paper, in many instances the agency or other moving party may not be in position to set forth all of such information in the moving paper, or perhaps not even in advance of the hearing, especially the "matters of fact and law asserted." The first sentence of this subsection merely requires that the information specified should be given as soon as it can be set forth and, in any event, in a sufficiently timely manner as to afford those entitled to the information an adequate opportunity to meet it. The second sentence complements the first and requires agencies and other parties promptly to reply to moving papers of private persons or permits agencies to require responsive pleading in any proceedings.

Section 5 (c) applies only to the class of adjudicatory proceedings included within the scope of section 5, i. e., cases of adjudication required by statute to be determined after opportunity for an agency hearing, and then not falling within one of the six excepted situations listed at the opening of section 5. As explained in the comments with respect to section 5 generally, this subsection does not apply either in proceedings to determine applications for initial licenses or in those to determine the reasonableness of rates in the past.

In the cases to which this subsection is applicable, if the informal procedures described in section 5 (b) (1) are not appropriate or have failed, a hearing is to be held as provided in sections 7 and 8. At such hearing the same officers who preside at the reception of evidence pursuant to section 7 shall make the recommended decision or initial decision "required by section 8" except where such officers become unavailable to the agency. The reference to section 8 is significant. Section 8 (a) provides that, in cases in which the agency has not presided at the reception of the evidence, the officer who presided (or, in cases not subject to subsection (e) of section 5, an officer or officers qualified to preside at hearings pursuant to section 7) shall make the initial or recommended decision, as the case may be. It is plain, therefore, that in cases subject to section 5 (e), only the officer who presided at the hearing (unless he is unavailable for reasons beyond

the agency's control) is eligible to make the initial or recommended decision, as the case may be.

This subsection further provides that in the adjudicatory hearings covered by it no presiding officer shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate (except to the extent required for the disposition of ex parte matters as authorized by law). The term "fact in issue" is used in its technical, litigious sense.

In most of the agencies which conduct adjudicative proceedings of the types subject to this subsection, the examiners are placed in organizational units apart from those to which the investigative or prosecuting personnel are assigned. Under this subsection such an arrangement will become operative in all such agencies. Further, in the adjudicatory cases covered by section 5 (c), no officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency in any case shall, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 8 except as witness or counsel in public proceedings. However, section 5 (c) does not apply to the agency itself or, in the case of a multi-headed agency, any member thereof. It would not preclude, for example, a member of the Interstate Commerce Commission personally conducting or supervising an investigation and subsequently participating in the determination of the agency action arising out of such investigation.

Section 5 (c), applying as it does only to cases of adjudication (except determining applications for initial licenses or determining reasonableness of rates in the past) within the scope of section 5 generally, has no application whatever to rule making, as defined in section 2 (c). As explained in the comment on section 2 (c), rule making includes a wide variety of subject matters, and within the scope of those matters it is not limited to the formulation of rules of general applicability but includes also the formulation of agency action whether of general or particular application, for example, the reorganization of a particular company.

Section 5 (d): Within the scope of section 5 (i. e., in cases of adjudication required by statute to be determined on the record after opportunity for an agency hearing, subject to certain exceptions) the agency is authorized to issue a declaratory order to terminate a controversy or remove uncertainty. Where declaratory orders are found inappropriate to the subject matter, no agency is required to issue them.

Section 6: Subsection (a), in stating a right of appearance for the purpose of settling or informally determining the matter in controversy, would not obtain if the agency properly determines that the responsible conduct of public business does not permit. It may be necessary, for example, to set the matter down for public hearing without preliminary discussion because a statute or the subject matter or the special circumstances so require.

It is not intended by this provision to require the agency to give notice to all interested persons, unless such notice is otherwise required by law.

This subsection does not deal with, or in any way qualify, the present power of an agency to regulate practice at its bar. It expressly provides moreover, that nothing in the act shall be construed either to grant or to deny the right of non-lawyers to appear before agencies in a representative capacity. Control over this matter remains in the respective agencies.

Section 6 (b): The first sentence states existing law. The second sentence is new.

Section 6 (c): The first sentence entitles a party to a subpoena upon a statement or showing of general relevance and reasonable scope of the evidence sought. The second sentence is intended to state the existing law with respect to the judicial enforcement of subpoenas.

Section 6 (d): The statement of grounds required herein will be very simple, as contrasted with the more elaborate findings which are customarily issued to support an order.

Section 7: This section applies in those cases of statutory hearing which are required by sections 4 and 5 to be conducted pursuant to section 7. Subject to the numerous exceptions contained in sections 4 and 5, they are cases in which an order or rule is to be made upon the basis of the record in a statutory hearing.

Section 7 (a): The subsection is not intended to disturb presently existing statutory provisions which explicitly provide for certain types of hearing officers. Among such are (1) joint hearings before officers of the Federal agencies and persons designated by one or more States, (2) where officers of more than one agency sit, (3) quota allotment cases under the Agricultural Adjustment Act of 1938, (4) marine casualty investigation boards, (5) registers of the General Land Office,

(6) special boards set up to review the rights of disconnected servicemen (38 U. S. C. 693h) and the rights of veterans to special unemployment compensation (38 U. S. C. 696h), and (7) boards of employees authorized under the Interstate Commerce Act (49 U. S. C. 17 (2)).

Subject to this qualification, section 7 (a) requires that there shall preside at the taking of evidence one or more examiners appointed as provided in this act, unless the agency itself or one or more of its members presides. This provision is one of the most important provisions in the act. In many agencies of the Government this provision may mean the appointment of a substantial number of hearing officers having no other duties. The resulting expense to the Government may be increased, particularly in agencies where hearings are now conducted by employees of a subordinate status or by employees having duties in addition to presiding at hearings. On the other hand, it is contemplated that the Civil Service Commission, which is empowered under the provisions of section 11 to prescribe salaries for hearing officers, will establish various salary grades in accordance with the nature and importance of the duties performed and will assign those in the lower grades to duties now performed by employees in the lower brackets. It may also be possible for the agencies to reorganize their staffs so as to permit the appointment of full-time hearing officers by reducing the number of employees engaged on other duties.

This subsection further provides for withdrawal or removal of examiners disqualified in a particular proceeding. Some of the agencies have voiced concern that this provision would permit undue delay in the conduct of their proceedings because of unnecessary hearings or other procedure to determine whether affidavits of bias are well founded. The provision does not require hearings in every instance but simply requires such procedure, formal or otherwise, as would be necessary to establish the merits of the allegations of bias. If it is manifest that the charge is groundless, there may be prompt disposition of the matter. On the other hand, if the affidavit appears to have substance, it should be inquired into. In any event, whatever procedure the agency deems appropriate must be made a part of the record in the proceeding in which the affidavit is filed.

Section 7 (b): The agency may delegate to a hearing officer any of the enumerated powers with which it is vested. The enumeration of the powers of hearing officers is not intended to be exclusive.

Section 7 (c): The first sentence states the customary rule that the proponent of a rule or order shall have the burden of proof. Statutory exceptions to the rule are preserved. Parties shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts. This is not intended to disturb the existing practice of submitting technical written reports, summaries, and analyses of material gathered in field surveys, and other devices appropriately adapted to the particular issues involved in specialized proceedings. Whether the agency must in such cases produce the maker of the report depends, as it does under the present law, on what is reasonable in all the circumstances.

It may be noted that agencies are empowered, in this subsection, to dispense with oral evidence only in the types of proceedings enumerated; i. e., in instances in which normally it is not necessary to see and hear the witnesses in order properly to appraise the evidence. While there may be types of proceedings other than those enumerated in which the oral testimony of the witnesses is not essential, in such instances the parties generally consent to submission of the evidence in written form so that the inability of the agency to compel submission of written evidence would not be burdensome.

The provision regarding "evidence in written form" does not limit the generality of the prevailing principle that "any evidence may be received"; i. e., that the rules of evidence as such are not applicable in administrative proceedings and that all types of pertinent evidentiary material may be considered. It is assumed, of course, that agencies will, in the words of the Attorney General's Committee on Administrative Procedure, rely only on such evidence (whether written or oral) as is "relevant, reliable, and probative." This is meant as a guide, but the courts in reviewing an order are governed by the provisions of section 10 (e), which states the "substantial evidence" rule.

Section 7 (d): The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision, in the cases covered by section 7. This follows from the proposition that sections 7 and 8 deal only with cases where by statute the decision is to be based on the record of hearing. Further, section 7 is limited by the exceptions contained in the opening sentences of sections 4 and 5; accordingly, certain special classes of cases, such as those where decisions rest solely on inspections, tests, or

elections, are not covered. The second sentence of the subsection enables the agency to take official notice of material facts which do not appear in the record, provided the taking of such notice is stated in the record or decision, but in such cases any party affected shall on timely request be afforded an opportunity to show the contrary.

Section 8: This section applies to all hearings held under section 7.

Section 8 (a): Under this subsection either the agency or a subordinate hearing officer may make the initial decision. As previously observed with respect to subsection (c) of section 5, in cases to which that subsection is applicable the same officer who personally presided over the hearing shall make such decision if it is to be made by a subordinate hearing officer. The agency may provide that in all cases the agency itself is to make the initial decision, or after the hearing it may remove a particular case from a subordinate hearing officer and thereupon make the initial decision. The initial decision of the hearing officer, in the absence of appeal to or review by the agency, is (or becomes) the decision of the agency. Upon review the agency may restrict its decision to questions of law, or to the question of whether the findings are supported by substantial evidence or the weight of evidence, as the nature of the case may be. On the other hand, it may make entirely new findings either upon the record or upon new evidence which it takes. It may remand the matter to the hearing officer for any appropriate further proceedings.

The intention underlying the last sentence of this subsection is to require the adoption of a procedure which will give the parties an opportunity to make their contentions to the agency before the issuance of a final agency decision. This sentence states as a general requirement that whenever the agency makes the initial decision without having presided at the reception of the evidence, a recommended decision shall be filed by the officer who presided at the hearing (or, in cases not subject to section 5 (c), by any other officer qualified to preside at section 7 hearings). However, this procedure need not be followed in rule making or in determining applications for initial licenses (1) if, in lieu of a recommended decision by such hearing officer, the agency issues a tentative decision; (2) if, in lieu of a recommended decision by such hearing officer, a recommended decision is submitted by any of the agency's responsible officers; or (3) if, in any event, the agency makes a record finding that "due and timely execution of its function imperatively and unavoidably so requires."

Subsection (c) of section 5, as explained in the comments on that subsection, does not apply to rule making. The broad scope of rule making is explained in the notes to subsection (c) of section 2.

The second exception permits, in proceedings to make rules and to determine applications for initial licenses, the continuation of the widespread agency practice of serving upon the parties, as a substitute for either an examiner's report or a tentative agency report, a report prepared by the staff of specialists and technicians normally engaged in that portion of the agency's operations to which the proceeding in question relates. The third exception permits, in lieu of any sort of preliminary report, the agency to issue forthwith its final rule or its order granting or denying an initial license in the emergent instances indicated. The subsection, however, requires that an examiner issue either an initial or a recommended decision, as the case may be, in all cases subject to section 7 except rule making and determining applications for initial licenses. The act permits no deviation from this requirement, unless, of course, the parties waive such procedure.

Section 8 (b): Prior to each recommended, initial, or tentative decision, parties shall have a timely opportunity to submit proposed findings and conclusions, and, prior to each decision upon agency review of either the decision of subordinate officers or of the agency's tentative decision, to submit exceptions to the initial, recommended, or tentative decision, as the case may be. Subject to the agency's rules, either the proposed findings or the exceptions may be oral in form where such mode of presentation is adequate.

Section 9: Subsection (a) is intended to declare the existing law. Subsection (b) is intended to codify the best existing law and practice. The second sentence of subsection (b) is not intended to apply to temporary licenses which may be issued pending the determination of applications for licenses.

Section 10: This section, in general, declares the existing law concerning judicial review. It provides for judicial review except insofar as statutes preclude it, or insofar as agency action is by law committed to agency discretion. A statute

may in terms preclude judicial review or be interpreted as manifesting a congressional intention to preclude judicial review. Examples of such interpretation are: *Switchmen's Union of North America v. National Mediation Board* (320 U. S. 297); *American Federation of Labor v. National Labor Relations Board* (308 U. S. 401); *Butte, Anaconda and Pacific Railway Co. v. United States* (290 U. S. 127). Many matters are committed partly or wholly to agency discretion. Thus, the courts have held that the refusal by the National Labor Relations Board to issue a complaint is an exercise of discretion unreviewable by the courts (*Jacobsen v. National Labor Relations Board*, 120 F. (2d) 96 (C. C. A. 3d); *Marine Engineers' Beneficial Assn. v. National Labor Relations Board*, decided April 8, 1943 (C. C. A. 2d), certiorari denied, 320 U. S. 777). In this act, for example, the failure to grant a petition filed under section 4 (d) would be similarly unreviewable.

Section 10 (a): Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review of such action. This reflects existing law. In *Alabama Power Co. v. Ickes* (302 U. S. 464), the Supreme Court stated the rule concerning persons entitled to judicial review. Other cases having an important bearing on this subject are: *Massachusetts v. Mellon* (262 U. S. 447), *The Chicago Junction Case* (264 U. S. 258), *Sprunt & Son v. United States* (281 U. S. 249), and *Perkins v. Lukens Steel Co.* (310 U. S. 113). An important decision interpreting the meaning of the terms "aggrieved" and "adversely affected" is *Federal Communications Commission v. Sanders Bros. Radio Station* (309 U. S. 470).

Section 10 (b): This subsection requires that where a specific statutory method is provided for reviewing a given type of case in the courts, that procedure shall be used. If there is no such procedure, or if the procedure is inadequate (i. e., where under existing law a court would regard the special statutory procedure as inadequate and would grant another form of relief), then any applicable procedure, such as prohibitory or mandatory injunction, declaratory judgment, or habeas corpus, is available. The final sentence of the subsection indicates that the question of the validity of an agency action may arise in a court proceeding to enforce the agency action. The statutes presently provide various procedures for judicial enforcement of agency action, and nothing in this act is intended to disturb those procedures. In such a proceeding the defendant may contest the validity of the agency action unless a prior, adequate, and exclusive opportunity to contest or review validity has been provided by law.

Section 10 (c): This subsection states (subject to the provisions of section 10 (a)) the acts which are reviewable under section 10. It is intended to state existing law. The last sentence makes it clear that the doctrine of exhaustion of administrative remedies with respect to finality of agency action is intended to be applicable only (1) where expressly required by statute (as, for example, is provided in 49 U. S. C. 17 (9)), or (2) where the agency's rules require that decisions by subordinate officers must be appealed to superior agency authority before the decision may be regarded as final for purposes of judicial review.

Section 10 (d): The first sentence states existing law. The second sentence may be said to change existing law only to the extent that the language of the opinion in *Scripps-Howard Radio, Inc. v. Federal Communications Commission* (316 U. S. 4, 14) may be interpreted to deny to reviewing courts the power to permit an applicant for a renewal of a license to continue to operate as if the original license had not expired, pending conclusion of the judicial review proceedings. In any event, the court must find, of course, that granting of interim relief is necessary to prevent irreparable injury.

Section 10 (e): This declares the existing law concerning the scope of judicial review. The power of the court to direct or compel agency action unlawfully withheld or unreasonably delayed is not intended to confer any nonjudicial functions or to narrow the principle of continuous administrative control enunciated by the Supreme Court in *Federal Communications Commission v. Pottsville Broadcasting Co.* (309 U. S. 134). Clause (5) is intended to embody the law as declared, for example, in *Consolidated Edison Co. v. National Labor Relations Board* (305 U. S. 197). There the Chief Justice said: "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion (p. 229) * * * assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force" (p. 230).

The last sentence of this section makes it clear that not every failure to observe the requirements of this statute or of the law is ipso facto fatal to the validity of

an order. The statute adopts the rule now well established as a matter of common law in all jurisdictions that error is not fatal unless prejudicial.

Section 11: This section provides for the appointment, compensation, and tenure of examiners who will preside over hearings and render decisions pursuant to sections 7 and 8. The section provides that appointments shall be made "subject to the civil service and other laws to the extent not inconsistent with this act." Appointments are to be made by the respective employing agencies of personnel determined by the Civil Service Commission to be qualified and competent examiners. The examiners appointed are to serve only as examiners, except that, in particular instances (especially where the volume of hearings under a given statute or in a given agency is not very great), examiners may be assigned additional duties which are not inconsistent with or which do not interfere with their duties as examiners. To insure equality of participation among examiners in the hearing and decision of cases, the agencies are required to use them in rotation so far as may be practicable.

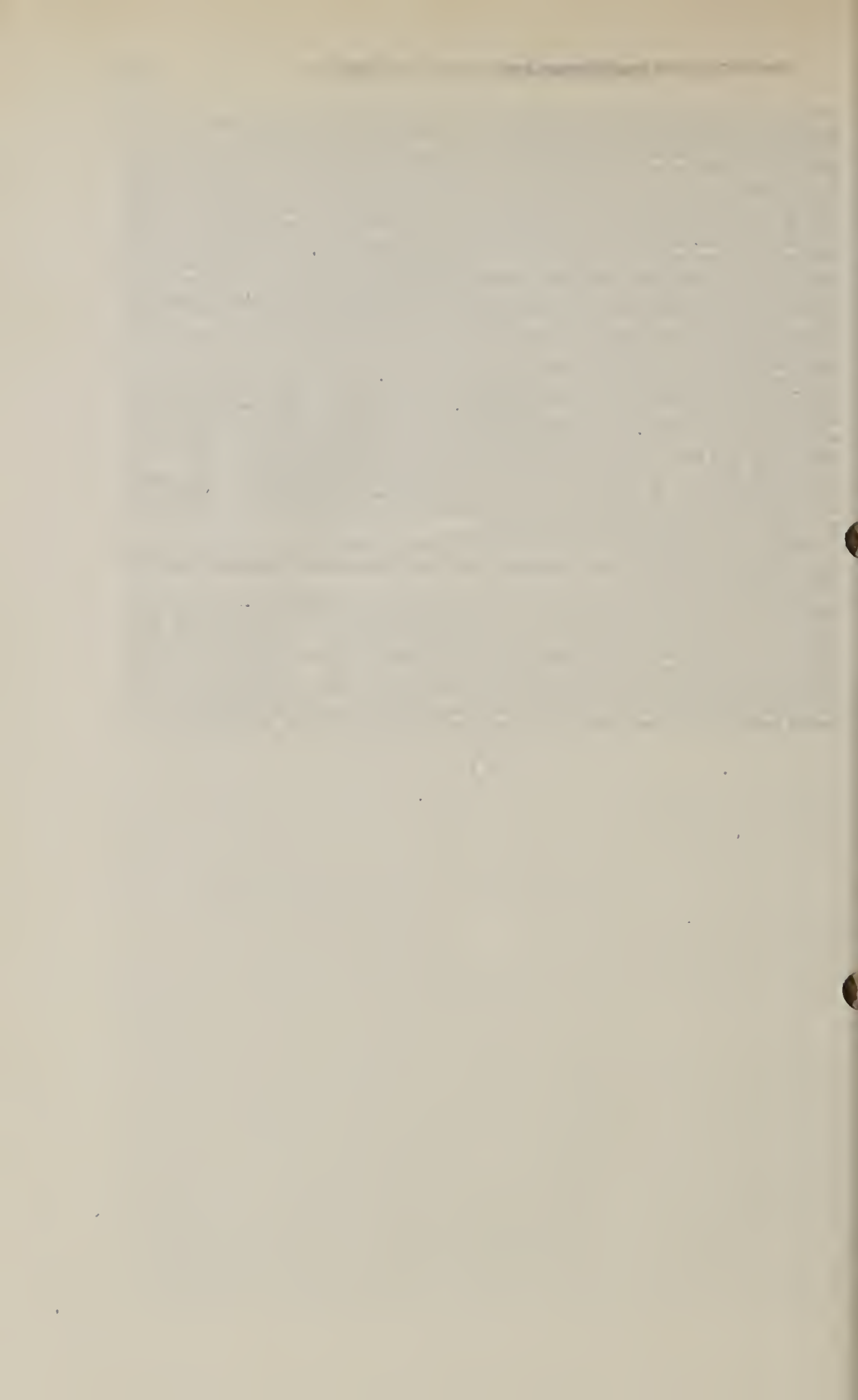
Examiners are subject to removal only for good cause "established and determined" by the Commission. The Commission must afford the examiner a hearing, if requested, and must rest its decision solely upon the basis of the record of such hearing. It should be noted that the hearing and the decision are to be conducted and made pursuant to the provisions of sections 7 and 8.

Section 11 provides further that the Commission shall prescribe the compensation of examiners, in accordance with the compensation schedules provided in the Classification Act, except that the efficiency rating system set forth in that act shall not be applicable to examiners.

Section 12: The first sentence of section 12 is intended simply to indicate that the act will be interpreted as supplementing constitutional and legal requirements imposed by existing law.

The section further provides that "no subsequent legislation shall be held to supersede or modify the provisions of this act except to the extent that such legislation shall do so expressly." It is recognized that no congressional legislation can bind subsequent sessions of the Congress. The present act can be repealed in whole or in part at any time after its passage. However, the act is intended to express general standards of wide applicability. It is believed that the courts should as a rule of construction interpret the act as applicable on a broad basis, unless some subsequent act clearly provides to the contrary.

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S. 7

[Report No. 752]

IN THE SENATE OF THE UNITED STATES

JANUARY 6, 1945

Mr. McCARRAN introduced the the following bill; which was read twice and referred to the Committee on the Judiciary

[Strike out all after the enacting clause and insert the part printed in italic]

NOVEMBER 19 (legislative day, OCTOBER 29), 1945

Reported by Mr. McCARRAN, with an amendment

A BILL

To improve the administration of justice by prescribing fair administrative procedure.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 ~~That this Act may be cited as the “Administrative Procedure~~
4 ~~Act”.~~

DEFINITIONS

6 ~~SEC. 2. As used in this Act—~~

7 ~~(a) AGENCY.~~—“Agency” means each authority of the
8 Government of the United States other than Congress, the
9 courts, or the governments of the possessions, Territories, or
10 the District of Columbia. Except as to the requirements

1 of section 3, there shall be excluded from the operation of
2 this Act ~~(1)~~ functions which by law expire on the termi-
3 nation of present hostilities, within any fixed period there-
4 after, or before July 1, 1947, and ~~(2)~~ agencies composed of
5 representatives of the parties or of organizations of the parties
6 to the disputes determined by them.

7 **~~(b)~~ PERSON AND PARTY.**—"Person" includes individ-
8 uals, partnerships, corporations, associations, or public or
9 private organizations of any character other than agencies.
10 "Party" includes any person or agency participating, or
11 properly seeking and entitled to participate, in any agency
12 proceeding or in proceedings for judicial review of any agency
13 action.

14 **~~(c)~~ RULE AND RULE MAKING.**—"Rule" means the
15 whole or any part of any agency statement of general appli-
16 cability designated to implement, interpret, or prescribe law
17 or policy or to describe the organization, procedure, or prac-
18 tice requirements of any agency. "Rule making" means
19 agency process for the formulation, amendment, or repeal of
20 a rule.

21 **~~(d)~~ ORDER AND ADJUDICATION.**—"Order" means the
22 whole or any part of the final disposition or judgment
23 (whether or not affirmative, negative, or declaratory in
24 form) of any agency, and "adjudication" means its process,

1 in a particular instance other than rule making but including
2 licensing.

3 ~~(e)~~ LICENSE AND LICENSING.—“License” includes the
4 whole or part of any agency permit, certificate, approval,
5 registration, charter, membership, or other form of permis-
6 sion. “Licensing” means agency process respecting the
7 grant, renewal, denial, revocation, suspension, annulment,
8 withdrawal, limitation, or conditioning of a license.

9 ~~(f)~~ SANCTION AND RELIEF.—“Sanction” includes, in
10 whole or part by an agency, any ~~(1)~~ prohibition, require-
11 ment, limitation, or other condition upon or deprivation of
12 the freedom of any person, ~~(2)~~ withholding of relief, ~~(3)~~
13 imposition of any form of penalty or fine, ~~(4)~~ destruction,
14 taking, seizure, or withholding of property, ~~(5)~~ assessment
15 of damages, reimbursement, restitution, compensation, costs,
16 charges, or fees, or ~~(6)~~ requirement of a license or other
17 compulsory or restrictive act. “Relief” includes, in whole or
18 part by an agency, any ~~(1)~~ grant of money, assistance,
19 authority, exemption, privilege, or remedy, ~~(2)~~ recognition
20 of any claim, right, or exception, or ~~(3)~~ taking of other
21 action beneficial to any person.

22 ~~(g)~~ AGENCY ACTION.—For the purposes of section 10,
23 “agency action” includes the whole or part of every agency
24 rule, order, license, sanction, relief, or the equivalent or denial

1 thereof and including in each case the supporting procedures,
2 findings, conclusions, and reasons required by law.

3 PUBLIC INFORMATION

4 SEC. 3. Except to the extent that there is directly in-
5 volved any military, naval, or diplomatic function of the
6 United States requiring secrecy in the public interest—

7 (a) RULES.—Every agency shall separately state and
8 currently publish (1) descriptions of its internal and field
9 organization, (2) a statement of the general course and
10 method by which each type of matter directly affecting
11 any person or party is channeled and determined, including
12 the nature and requirements of all formal or informal pro-
13 ceedures available as well as forms and instructions as to
14 the scope and contents of all papers, reports, or examina-
15 tions, and (3) substantive regulations adopted as authorized
16 by law and statements of general policy or interpretations
17 framed by the agency. No person shall in any manner be
18 held liable or prejudiced for compliance with such rules or
19 for failure to resort to organization or procedure not so
20 published.

21 (b) RULINGS AND ORDERS.—Every agency shall pub-
22 lish or make available to public inspection all generally
23 applicable rulings on questions of law and all final opinions
24 or orders in the adjudication of cases except to the extent
25 (1) not utilized as precedents and required by published

1 rule for good cause to be held confidential or ~~(2)~~ relating to
2 the internal management of the agency and not directly
3 affecting public substantive or procedural privileges, rights,
4 or duties.

5 RULE MAKING

6 SEC. 4. Except to the extent that there is directly in-
7 volved any military, naval, or diplomatic function of the
8 United States—

9 ~~(a)~~ NOTICE.—General notice of proposed substantive
10 rule making shall be published, including ~~(1)~~ a statement
11 of the time, place, and nature of public rule-making pro-
12 ceedings, ~~(2)~~ reference to the authority under which the
13 rule is proposed, and ~~(3)~~ either the terms or substance
14 of the proposed rule or a description of the subjects and
15 issues involved. Except in cases in which rules are not re-
16 quired by statute to be made after opportunity for agency
17 hearing, this subsection shall not apply to interpretative
18 rules, general statements of policy, rules of agency organiza-
19 tion, procedure, or practice, or in any situation in which the
20 agency, for good cause finds notice and public procedure
21 thereon impracticable because of unavoidable lack of time or
22 other emergency.

23 ~~(b)~~ PROCEDURES.—After notice required by this sec-
24 tion, the agency shall afford interested parties an opportunity
25 to participate in the rule making through submission of

1 written data, views, or argument with or without oppor-
2 tunity to present the same orally in any manner. After
3 consideration of all relevant matter presented the agency
4 shall, upon adoption or rejection of proposals, publish its
5 reasons and conclusions. To the extent that rules are re-
6 quired by law to be made upon the record of an agency
7 hearing, or after opportunity therefor, the requirements of
8 sections 7 and 8 shall apply in place of the prior provisions
9 of this subsection.

(c) PETITIONS.—To the extent that an agency is authorized to issue rules it shall accord any interested person the right to petition for the issuance, amendment, or rescission of a rule.

14 ~~ADJUDICATION~~

15 SEC. 5. In every case of adjudication required by statute
16 to be determined after opportunity for an agency hearing,
17 except to the extent that there is directly involved any
18 matter subject to a subsequent trial of the law and the
19 facts de novo in any court—

(a) NOTICE.—Persons entitled to notice shall be informed of (1) the time, place, and nature of agency proceedings, (2) the legal authority and jurisdiction under which the proposed proceedings are to be had, and (3) the matters of fact and law in issue. In instances in which private persons are the moving parties, other parties to the

1 proceeding shall give prompt notice of issues controverted
2 in fact or law.

3 ~~(b)~~ PROCEDURE.—The agency shall afford all interested
4 parties opportunity for the settlement or adjudication of
5 relevant issues through ~~(1)~~ the submission and consideration
6 of facts, argument, offers of settlement, or proposals of adjust-
7 ment and ~~(2)~~, to the extent that the parties are unable to so
8 determine any controversy by consent, hearing and decision
9 upon notice and in conformity with sections 7 and 8. The
10 same officers who preside at the reception of evidence pur-
11 suant to section 7 shall make the recommended decision or
12 initial decision pursuant to section 8 except in determining
13 applications for licenses or where such officers become unavail-
14 able to the agency.

15 ~~(c)~~ SEPARATION OF FUNCTIONS.—No officer, em-
16 ployee, or agent engaged in the performance of investigative
17 or prosecuting functions for any agency shall participate or
18 advise in the decision, recommended decision, or agency
19 review pursuant to section 8 except as witness or counsel
20 in public proceedings. This subsection shall not prevent the
21 agency from supervising the issuance of process or similar
22 papers or from appearing thereon as a party.

23 ~~(d)~~ DECLARATORY ORDERS.—The agency is authorized,
24 with like effect as in the case of other orders, to issue a

1 declaratory order to terminate a controversy or remove
2 uncertainty.

3 ~~ANCILLARY MATTERS~~

4 SEC. 6. In connection with any proceedings or author-
5 ity—

6 ~~(a) APPEARANCE.~~—Every interested person shall be
7 accorded the right to appear in person or by counsel or other
8 qualified representative before any agency or its responsible
9 officers or employees to secure information or for the prompt
10 negotiation, adjustment, or determination of any issue, re-
11 quest, or controversy. Every person appearing or sum-
12 moned in any agency proceeding shall be freely accorded the
13 right to be accompanied and advised by counsel. In fixing
14 the times and places for proceedings, regard shall be had for
15 the convenience and necessity of the parties or their repre-
16 sentatives.

17 ~~(b) INVESTIGATIONS.~~—No process, requirement of a
18 report, demand for inspection, or other investigative act or
19 demand shall be enforceable in any manner or for any pur-
20 pose except ~~(1)~~ as expressly authorized by law, ~~(2)~~ within
21 the jurisdiction of the agency, ~~(3)~~ without denying rights
22 of personal privilege or privacy, and ~~(4)~~ in furtherance of
23 requirements of law enforcement. Every person required
24 to submit data or evidence shall be entitled to retain or pro-
25 cure a copy or transcript thereof.

1 (c) SUBPENAS.—Subpenas authorized by law shall be
 2 issued to any party upon request and, as may be required by
 3 rules of procedure, upon a statement or showing of general
 4 relevance, necessity, or reasonable scope of the evidence
 5 sought. Upon any contest of the validity of a subpoena or
 6 similar process or demand, the court shall determine all
 7 relevant questions of law raised by the parties, including
 8 the authority or jurisdiction of the agency, and in any pro-
 9 ceeding for enforcement shall enforce (by the issuance of
 10 an order requiring the production of the evidence or data
 11 under penalty of punishment for contempt in case of con-
 12 tumacious failure to do so) or refuse to enforce such subpoena
 13 accordingly.

14 (d) DENIALS.—Prompt notice shall be given of the
 15 denial in whole or part of any application, petition, or other
 16 request of any person. Such notice shall be accompanied by
 17 a reference to any further agency procedure available to
 18 such person and, except to the extent affirming prior denial,
 19 a simple statement of grounds.

20 (e) EFFECTIVE DATES.—The required publication or
 21 service of any substantive and effective rule (other than
 22 one granting exemption or relieving restriction) or final
 23 and affirmative order (except the grant or renewal of a
 24 license) shall precede for not less than thirty days the

1 effective date thereof except as otherwise authorized by
2 law and provided by the agency upon good cause found.

3 ~~(f)~~ PUBLIC RECORDS.—Matters of official record shall
4 be available to interested persons except personal data, in-
5 formation required by law to be held confidential, or, for
6 good cause found and upon published rule, other specified
7 classes of information.

8 HEARINGS

9 SEC. 7. In a hearing pursuant to sections 4 or 5—

10 ~~(a)~~ PRESIDING OFFICERS.—There shall preside at the
11 taking of evidence ~~(1)~~ the agency or ~~(2)~~ one or more
12 subordinate hearing officers designated from members of
13 the body which comprises the agency, State representatives
14 as authorized by statute, or examiners appointed as pro-
15 vided in this Act.

16 The functions of all presiding officers and of officers par-
17 ticipating in decisions in conformity with section 8 shall be
18 conducted in an impartial manner. Except to the extent
19 required for the disposition of exparte matters as authorized
20 by law, no such officer shall consult or receive evidence or
21 argument from or on behalf of any person or party except
22 upon notice and opportunity for all parties to participate.
23 Upon the filing in good faith of a timely and sufficient affi-
24 davit of personal bias, disqualification, or conduct contrary
25 to law of any such officer, the agency or another such officer

1 shall after hearing determine the matter as a part of the
2 record and decision in the case.

3 Subject to the civil-service and other laws not inconsis-
4 ent with this Act there shall be appointed for each agency
5 as many qualified and competent examiners as may be
6 necessary for the hearing or decision of cases, who shall
7 perform no other duties, be removable only for good cause
8 after hearing, and receive a fixed salary not subject to
9 change except that the Civil Service Commission shall
10 generally survey and adjust examiners' salaries in order
11 to assure adequacy and uniformity in accordance with the
12 nature and importance of the duties performed. Agencies
13 occasionally or temporarily insufficiently staffed may utilize
14 examiners selected from other agencies by the Civil Service
15 Commission.

16 ~~(b)~~ HEARING POWERS.—Officers presiding at hearings
17 shall have power, in accordance with the published rules
18 of the agency and within its powers, to ~~(1)~~ administer
19 oaths and affirmations, ~~(2)~~ issue subpoenas authorized by
20 law, ~~(3)~~ rule upon offers of proof and receive relevant
21 evidence, ~~(4)~~ take or cause depositions to be taken when-
22 ever the ends of justice would be served thereby, ~~(5)~~
23 regulate the course of the hearing, ~~(6)~~ hold conferences
24 for the settlement or simplification of the issues by consent
25 of the parties, ~~(7)~~ dispose of procedural requests or similar

1 matters, and ~~(8)~~ make decisions or recommended deci-
2 sions in conformity with section 8.

3 ~~(c)~~ EVIDENCE.—The proponent of a rule or order
4 shall have the burden of proceeding except as statutes
5 otherwise provide. The conduct of every person or status
6 of any enterprise shall be presumed lawful until the
7 contrary shall have been shown. Every party shall have
8 the right of reasonable cross-examination and to submit
9 rebuttal evidence except that in rule making or determin-
10 ing applications for licenses any agency may, where the
11 interest of any party will not be prejudiced thereby, adopt
12 procedures for the submission of written evidence subject to
13 opportunity for such cross-examination and rebuttal. Any
14 evidence may be received, but no sanction shall be imposed or
15 rule or order be issued except as supported by relevant, re-
16 liable, and probative evidence.

17 ~~(d)~~ RECORD.—The transcript of testimony and exhibits,
18 together with all papers and requests relating to the hearing
19 or issues, shall constitute the exclusive record for decision
20 in accordance with section 8 and be made available to the
21 parties. The taking of official notice as to facts beyond the
22 record shall be unlawful unless the parties shall both be
23 notified of the facts so noticed and accorded an opportunity
24 to show the contrary.

DECISIONS

SEC. 8. In cases in which a hearing is required to be conducted in conformity with section 7—

(a) ACTION BY SUBORDINATES.—In cases in which the agency has not presided at the reception of the evidence, an officer or officers qualified to preside at hearings pursuant to section 7 shall either initially decide the case or the agency shall require the entire record certified to it for initial decision. Whenever such officers make the initial decision and in the absence of either an appeal to the agency or review upon motion of the agency within time provided by rule, such decision shall without further proceedings then become the decision of the agency. Whenever the agency makes the initial decision without having presided at the reception of the evidence, such officers shall first recommend a decision. Subordinate officers recommending decisions or making initial decisions shall first receive and consider written and oral arguments submitted by the parties.

(b) SUBMITTALS AND DECISIONS.—Prior to each recommended decision, initial decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded an opportunity for the submission of, and the officers participating in such decisions shall consider, (1) proposed findings and conclusions, (2) exceptions to

1 decisions or recommended decisions of subordinate officers;
2 and ~~(3)~~ supporting reasons for such exceptions or proposed
3 findings or conclusions. All decisions and recommended
4 decisions shall be a part of the record, stated in writing,
5 served upon the parties, and include a statement of ~~(1)~~
6 findings of fact, conclusions of law, and reasons therefor upon
7 all relevant issues of fact, law, or agency discretion pre-
8 sented and ~~(2)~~ the appropriate rule, order, sanction, relief,
9 or denial thereof supported by such findings, conclusions,
10 and reasons.

SANCTIONS AND POWERS

12 SEC. 9. In the exercise of any power or authority—

13 (a) IN GENERAL.—No sanction shall be imposed or
14 substantive rule or order be issued except within jurisdic-
15 tion delegated to the agency by law and as specified and
16 authorized by statute.

17 (b) LICENSES.—In any case, except financial reorgani-
18 zations, in which a license is required by law and application
19 is made therefor such license shall be deemed granted un-
20 less the agency shall within not more than sixty days of
21 such application have made its decision or set the matter
22 for proceedings required to be conducted pursuant to
23 sections 7 and 8 of this Act or for other proceedings re-
24 quired by law. Except in cases of clearly demonstrated
25 willfulness or those in which public health, morals, or

1 safety manifestly require otherwise, no withdrawal, suspen-
2 sion, revocation, or annulment of any license shall be lawful
3 unless, prior to the institution of agency proceedings there-
4 for, facts or conduct which may warrant such action shall
5 have been called to the attention of the licensee by the
6 agency in writing and such person shall have been accorded
7 opportunity to demonstrate or achieve compliance with all
8 lawful requirements. In any case in which the holder
9 thereof has made timely application for a renewal or a new
10 license, no license with reference to any activity of a con-
11 tinuing nature shall expire until such application shall have
12 been finally determined by the agency.

13 ~~(c) PUBLICITY.~~—Except as provided by law, no agency
14 publicity reflecting adversely upon any person or enterprise
15 shall be issued other than the public release or availability
16 of texts of authorized documents or statements of the positions
17 of the parties to a controversy.

18 JUDICIAL REVIEW

19 SEC. 10. Except ~~(1)~~ so far as statutes expressly pre-
20 clude judicial review, ~~(2)~~ in proceedings for judicial review
21 in any legislative court, or ~~(3)~~ to the extent that agency
22 action is by law committed to agency discretions—

23 ~~(a) RIGHT OF REVIEW.~~—Any person adversely affected
24 by any agency action shall be entitled to judicial review
25 thereof in accordance with this section.

1 ~~(b)~~ FORM AND VENUE OF ACTION.—The form of pro-
2 ceeding for judicial review shall be any special statutory
3 review proceeding relevant to the subject matter in any
4 court specified by statute or, in the absence or inadequacy
5 thereof, any applicable form of legal action (including
6 actions for declaratory judgments or writs of injunction
7 or habeas corpus) in any court of competent jurisdiction.
8 Any party adversely affected or threatened to be so affected
9 may, through declaratory judgment procedure after resort
10 to any adequate agency relief provided by rule or statute,
11 secure a judicial declaration of rights respecting the validity
12 or application of any agency action. Agency action shall
13 be subject to judicial review in civil or criminal proceed-
14 ings for judicial enforcement except to the extent that prior,
15 adequate, and exclusive opportunity for such review is pro-
16 vided by statute.

17 ~~(c)~~ REVIEWABLE ACTS.—Every final agency action,
18 or agency action for which there is no other adequate remedy
19 in any court, shall be subject to judicial review. Any
20 preliminary, procedural, or intermediate agency action or
21 ruling not directly reviewable shall be subject to review upon
22 the review of the final agency action. Any agency action
23 shall be final for the purposes of this section notwithstanding
24 that no petition for review, rehearing, reconsideration, re-

1 opening, or declaratory order has been presented to or deter-
 2 mined by the agency.

3 ~~(d)~~ INTERIM RELIEF.—Pending judicial review any
 4 agency is authorized, where it finds that justice so requires,
 5 to postpone the effective date of any action taken by it.
 6 Upon such conditions as may be required and to the extent
 7 necessary to preserve status or rights, afford an oppor-
 8 tunity for judicial review of any question of law or prevent
 9 irreparable injury, every reviewing court and every court to
 10 which a case may be taken on appeal from or upon appli-
 11 cation for certiorari or other writ to a reviewing court is
 12 authorized to issue all necessary and appropriate process to
 13 postpone the effective date of any agency action or tem-
 14 porarily grant or extend relief denied or withheld.

15 ~~(c)~~ SCOPE OF REVIEW.—So far as necessary to decision
 16 and where presented the reviewing court shall decide all
 17 relevant questions of law, interpret constitutional and stat-
 18 utory provisions, and determine the meaning or applica-
 19 bility of the terms of any agency action. It shall ~~(A)~~ direct
 20 or compel agency action unlawfully withheld or unreason-
 21 ably delayed and ~~(B)~~ hold unlawful and set aside agency
 22 action found ~~(1)~~ arbitrary, capricious, or otherwise not in
 23 accordance with law, ~~(2)~~ contrary to constitutional right,
 24 power, privilege, or immunity, ~~(3)~~ in excess of statutory

1 jurisdiction, authority, or limitations, or short of statutory
2 right, (4) without due observance of procedure required by
3 law, (5) unsupported by competent, material, and substan-
4 tial evidence upon the whole agency record as reviewed by
5 the court in any case subject to the requirements of sections
6 7 and 8, or (6) unwarranted by the facts to the extent that
7 the facts in any case are subject to trial de novo by the re-
8 viewing court. The relevant facts shall be tried and deter-
9 mined de novo by the original court of review in all cases in
10 which adjudications are not required by statute to be made
11 upon agency hearing.

12 CONSTRUCTION AND EFFECT

13 SEC. 11. Nothing in this Act shall be held to diminish
14 the constitutional rights of any person or to limit or repeal
15 additional requirements imposed by statute or otherwise rec-
16 ognized by law. Except as otherwise required by law, all
17 requirements or privileges relating to evidence or procedure
18 shall apply equally to any agency or person. If any provi-
19 sion of this Act or the application thereof is held invalid, the
20 remainder of this Act or other applications of such provision
21 shall not be affected. Every agency is granted all authority
22 necessary to comply with the requirements of this Act. No
23 subsequent legislation shall be held to supersede or modify
24 the provisions of this Act unless such legislation shall do so
25 expressly and by reference to the provisions of this Act so

1 affected. This Act shall take effect three months after its
 2 approval except that sections 7 and 8 shall take effect six
 3 months after such approval, the requirement of the selec-
 4 tion of examiners through civil service shall not become ef-
 5 fective until one year after the termination of present hos-
 6 tilities, and no procedural requirement shall be mandatory
 7 as to any agency proceeding initiated prior to the effective
 8 date of such requirement.

9 *That this Act may be cited as the "Administrative Procedure*
 10 *Act".*

11 DEFINITIONS

12 *SEC. 2. As used in this Act—*

13 *(a) AGENCY.—"Agency" means each authority (whether*
 14 *or not within or subject to review by another agency) of the*
 15 *Government of the United States other than Congress, the*
 16 *courts, or the governments of the possessions, Territories, or*
 17 *the District of Columbia. Nothing in this Act shall be con-*
 18 *strued to repeal delegations of authority as provided by law.*
 19 *Except as to the requirements of section 3, there shall be ex-*
 20 *cluded from the operation of this Act (1) agencies composed*
 21 *of representatives of the parties or of representatives of or-*
 22 *ganizations of the parties to the disputes determined by them,*
 23 *(2) courts martial and military commissions, (3) military*
 24 *or naval authority exercised in the field in time of war or in*
 25 *occupied territory, or (4) functions which by law expire on*

1 the termination of present hostilities, within any fixed period
2 thereafter, or before July 1, 1947, and the functions con-
3 ferred by the following statutes: Selective Training and
4 Service Act of 1940; Contract Settlement Act of 1944;
5 Surplus Property Act of 1944.

6 (b) PERSON AND PARTY.—“Person” includes indi-
7 viduals, partnerships, corporations, associations, or public
8 or private organizations of any character other than agencies.
9 “Party” includes any person or agency named or admitted
10 as a party, or properly seeking and entitled as of right to
11 be admitted as a party, in any agency proceeding; but noth-
12 ing herein shall be construed to prevent an agency from
13 admitting any person or agency as a party for limited
14 purposes.

15 (c) RULE AND RULE MAKING.—“Rule” means the
16 whole or any part of any agency statement of general ap-
17 plicability designed to implement, interpret, or prescribe law
18 or policy or to describe the organization, procedure, or
19 practice requirements of any agency. “Rule making” means
20 agency process for the formulation, amendment, or repeal
21 of a rule and includes the approval or prescription for the
22 future of rates, wages, corporate or financial structures or
23 reorganizations thereof, prices, facilities, appliances, serv-
24 ices, or allowances therefor, or of valuations, costs, or
25 accounting, or practices bearing upon any of the foregoing.

1 (d) *ORDER AND ADJUDICATION*.—"Order" means the
 2 whole or any part of the final disposition (whether affirma-
 3 tive, negative, or declaratory in form) of any agency in
 4 any matter other than rule making but including licensing.
 5 "Adjudication" means agency process for the formulation
 6 of an order.

7 (e) *LICENSE AND LICENSING*.—"License" includes the
 8 whole or part of any agency permit, certificate, approval,
 9 registration, charter, membership, statutory exemption, or
 10 other form of permission. "Licensing" includes agency
 11 process respecting the grant, renewal, denial, revocation,
 12 suspension, annulment, withdrawal, limitation, amendment,
 13 modification, or conditioning of a license.

14 (f) *SANCTION AND RELIEF*.—"Sanction" includes the
 15 whole or part of any agency (1) prohibition, requirement,
 16 limitation, or other condition affecting the freedom of any
 17 person; (2) withholding of relief; (3) imposition of any
 18 form of penalty or fine; (4) destruction, taking, seizure, or
 19 withholding of property; (5) assessment of damages, reim-
 20 bursement, restitution, compensation, costs, charges, or fees;
 21 (6) requirement, revocation, or suspension of a license; or
 22 (7) taking of other compulsory or restrictive action. "Re-
 23 lief" includes the whole or part of any agency (1) grant of
 24 money, assistance, license, authority, exemption, exception,
 25 privilege, or remedy; (2) recognition of any claim, right,

1 immunity, privilege, exemption, or exception; or (3) taking
2 of any other action beneficial to any person.

3 (g) AGENCY PROCEEDING AND ACTION.—“Agency
4 proceeding” means any agency process as defined in subsec-
5 tions (c), (d), and (e) of this section. For the purposes of
6 section 10, “agency action” includes the whole or part of
7 every agency rule, order, license, sanction, relief, or the
8 equivalent or denial thereof, or failure to act.

9 PUBLIC INFORMATION

10 SEC. 3. Except to the extent that there is involved (1)
11 any function of the United States requiring secrecy in the
12 public interest or (2) any matter relating solely to the internal
13 management of an agency—

14 (a) RULES.—Every agency shall separately state and
15 currently publish in the Federal Register (1) descriptions of
16 its central and field organization; (2) the established places •
17 and methods whereby the public may secure information or
18 make submittals or requests; (3) statements of the general
19 course and method by which its rule making and adjudicating
20 functions are channeled and determined, including the nature
21 and requirements of all formal or informal procedures avail-
22 able as well as forms and instructions as to the scope and
23 contents of all papers, reports, or examinations; and (4)
24 substantive rules adopted as authorized by law and statements
25 of general policy or interpretations formulated and adopted

1 *by the agency for the guidance of the public. No person shall*
 2 *in any manner be required to resort to organization or pro-*
 3 *cedure not so published.*

4 (b) *OPINIONS AND ORDERS.*—*Every agency shall pub-*
 5 *lish or, in accordance with published rule, make available to*
 6 *public inspection all final opinions or orders in the adjudica-*
 7 *tion of cases except those required for good cause to be held*
 8 *confidential and not cited as precedents.*

9 (c) *PUBLIC RECORDS.*—*Save as otherwise required by*
 10 *statute, matters of official record shall in accordance with pub-*
 11 *lished rule be made available to persons properly and directly*
 12 *concerned except information held confidential for good cause*
 13 *found.*

14 *RULE MAKING*

15 *SEC. 4. Except to the extent that there is involved (1)*
 16 *any military, naval, or foreign affairs function of the United*
 17 *States or (2) any matter relating to agency management or*
 18 *personnel or to public property, loans, grants, benefits, or*
 19 *contracts—*

20 (a) *NOTICE.*—*General notice of proposed rule making*
 21 *shall be published in the Federal Register and shall include*
 22 *(1) a statement of the time, place, and nature of public rule*
 23 *making proceedings; (2) reference to the authority under*
 24 *which the rule is proposed; and (3) either the terms or sub-*
 25 *stance of the proposed rule or a description of the subjects*

1 and issues involved. Except where notice or hearing is re-
2 quired by statute, this subsection shall not apply to interpreta-
3 tive rules, general statements of policy, rules of agency organi-
4 zation, procedure, or practice, or in any situation in which
5 the agency for good cause finds (and incorporates the finding
6 and a brief statement of the reasons therefor in the rules is-
7 sued) that notice and public procedure thereon are im-
8 practicable, unnecessary, or contrary to the public interest.

9 (b) *PROCEDURES*.—After notice required by this section,
10 the agency shall afford interested persons an opportunity to
11 participate in the rule making through submission of written
12 data, views, or argument with or without opportunity to
13 present the same orally in any manner; and, after considera-
14 tion of all relevant matter presented, the agency shall incorpo-
15 rate in any rules adopted a concise general statement of their
16 basis and purpose. Where rules are required by law to be
17 made upon the record after opportunity for or upon an agency
18 hearing, the requirements of sections 7 and 8 shall apply in
19 place of the provisions of this subsection.

20 (c) *EFFECTIVE DATES*.—The required publication or
21 service of any substantive rule (other than one granting or
22 recognizing exemption or relieving restriction or interpretative
23 rules and statements of policy) shall be made not less than
24 thirty days prior to the effective date thereof except as other-

1 *wise provided by the agency upon good cause found and*
2 *published with the rule.*

3 *(d) PETITIONS.—Every agency shall accord any inter-*
4 *ested person the right to petition for the issuance, amendment,*
5 *or repeal of a rule.*

6 ADJUDICATION

7 *SEC. 5. In every case of adjudication required by statute*
8 *to be determined on the record after opportunity for an*
9 *agency hearing, except to the extent that there is involved*
10 *(1) any matter subject to a subsequent trial of the law and*
11 *the facts de novo in any court; (2) the selection or tenure*
12 *of an officer or employee of the United States other than*
13 *examiners appointed pursuant to section 11; (3) proceed-*
14 *ings in which decisions rest solely on inspections, tests, or*
15 *elections; (4) the conduct of military, naval, or foreign*
16 *affairs functions; (5) cases in which an agency is acting as*
17 *an agent for a court; and (6) the certification of employee*
18 *representatives—*

19 *(a) NOTICE.—Persons entitled to notice of an agency*
20 *hearing shall be timely informed of (1) the time, place, and*
21 *nature thereof; (2) the legal authority and jurisdiction under*
22 *which the hearing is to be held; and (3) the matters of fact*
23 *and law asserted. In instances in which private persons are*
24 *the moving parties, other parties to the proceeding shall give*

1 prompt notice of issues controverted in fact or law; and in
2 other instances agencies may by rule require responsive
3 pleading. In fixing the times and places for hearings, due
4 regard shall be had for the convenience and necessity of the
5 parties or their representatives.

6 (b) *PROCEDURE.*—The agency shall afford all in-
7 terested parties opportunity for (1) the submission and con-
8 sideration of facts, argument, offers of settlement, or propo-
9 sals of adjustment where time, the nature of the proceeding,
10 and the public interest permit and (2), to the extent that the
11 parties are unable so to determine any controversy by consent,
12 hearing and decision upon notice and in conformity with
13 sections 7 and 8.

14 (c) *SEPARATION OF FUNCTIONS.*—The same officers
15 who preside at the reception of evidence pursuant to section 7
16 shall make the recommended decision or initial decision re-
17 quired by section 8 except where such officers become un-
18 available to the agency. Save to the extent required for the
19 disposition of *ex parte* matters as authorized by law, no such
20 officer shall consult any person or party on any fact in issue
21 unless upon notice and opportunity for all parties to partici-
22 pate; nor shall such officer be responsible to or subject to the
23 supervision or direction of any officer, employee, or agent
24 engaged in the performance of investigative or prosecuting
25 functions for any agency. No officer, employee, or agent

1 engaged in the performance of investigative or prosecuting
 2 functions for any agency in any case shall, in that or a
 3 factually related case, participate or advise in the decision,
 4 recommended decision, or agency review pursuant to section
 5 8 except as witness or counsel in public proceedings. This
 6 subsection shall not apply in determining applications for
 7 initial licenses or the past reasonableness of rates; nor shall
 8 it be applicable in any manner to the agency or any member
 9 or members of the body comprising the agency.

10 (d) *DECLARATORY ORDERS.*—The agency is author-
 11 ized in its sound discretion, with like effect as in the case of
 12 other orders, to issue a declaratory order to terminate a con-
 13 troversy or remove uncertainty.

14 *ANCILLARY MATTERS*

15 *SEC. 6. Except as otherwise provided in this Act—*

16 (a) *APPEARANCE.*—Any person compelled to appear in
 17 person before any agency or representative thereof shall be
 18 accorded the right to be accompanied, represented, and
 19 advised by counsel or, if permitted by the agency, by other
 20 qualified representative. Every party shall be accorded the
 21 right to appear in person or by or with counsel or other
 22 duly qualified representative in any agency proceeding. So
 23 far as the responsible conduct of public business permits, any
 24 interested person may appear before any agency or its
 25 responsible officers or employees for the presentation, adjust-

1 ment, or determination of any issue, request, or controversy
2 in any proceeding or in connection with any agency function,
3 including stop-order or other summary actions. Every
4 agency shall proceed with reasonable dispatch to conclude any
5 matter presented to it except that due regard shall be had for
6 the convenience and necessity of the parties or their representa-
7 tives. Nothing herein shall be construed either to grant or
8 to deny to any person who is not a lawyer the right to
9 appear for or represent others before any agency or in any
10 agency proceeding.

11 (b) INVESTIGATIONS.—No process, requirement of a
12 report, inspection, or other investigative act or demand shall
13 be issued, made, or enforced in any manner or for any
14 purpose except as authorized by law. Every person com-
15 pelled to submit data or evidence shall be entitled to retain
16 or, on payment of lawfully prescribed costs, procure a copy
17 or transcript thereof, except that in a nonpublic investigatory
18 proceeding the witness may for good cause be limited to
19 inspection of the official transcript of his testimony.

20 (c) SUBPENAS.—Agency subpoenas authorized by law
21 shall be issued to any party upon request and, as may be
22 required by rules of procedure, upon a statement or showing
23 of general relevance and reasonable scope of the evidence
24 sought. Upon contest the court shall sustain any such
25 subpoena or similar process or demand to the extent that it is

1 found to be in accordance with law and, in any proceeding
 2 for enforcement, shall issue an order requiring the appear-
 3 ance of the witness or the production of the evidence or data
 4 under penalty of punishment for contempt in case of con-
 5 tumacious failure to do so.

6 (d) DENIALS.—Prompt notice shall be given of the
 7 denial in whole or in part of any written application, petition,
 8 or other request of any interested person made in connection
 9 with any agency proceeding. Except in affirming a prior
 10 denial or where the denial is self-explanatory, such notice shall
 11 be accompanied by a simple statement of grounds.

12 HEARINGS

13 SEC. 7. In hearings which section 4 or 5 requires to be
 14 conducted pursuant to this section—

15 (a) PRESIDING OFFICERS.—There shall preside at the
 16 taking of evidence (1) the agency, (2) one or more members
 17 of the body which comprises the agency, or (3) one or more
 18 examiners appointed as provided in this Act; but nothing
 19 in this Act shall be deemed to supersede the conduct of
 20 specified classes of proceedings in whole or part by or before
 21 boards or other officers specially provided for by or desig-
 22 nated pursuant to statute. The functions of all presiding
 23 officers and of officers participating in decisions in conformity
 24 with section 8 shall be conducted in an impartial manner.
 25 Any such officer may at any time withdraw if he deems him-

1 self disqualified; and, upon the filing in good faith of a timely
2 and sufficient affidavit of personal bias or disqualification of
3 any such officer, the agency shall determine the matter as a
4 part of the record and decision in the case.

5 (b) *HEARING POWERS.*—Officers presiding at hearings
6 shall have authority, subject to the published rules of the
7 agency and within its powers, to (1) administer oaths and
8 affirmations, (2) issue subpoenas authorized by law, (3) rule
9 upon offers of proof and receive relevant evidence, (4) take
10 or cause depositions to be taken whenever the ends of justice
11 would be served thereby, (5) regulate the course of the hear-
12 ing, (6) hold conferences for the settlement or simplifica-
13 tion of the issues by consent of the parties, (7) dispose of pro-
14 cedural requests or similar matters, (8) make decisions or
15 recommend decisions in conformity with section 8, and (9)
16 take any other action authorized by agency rule consistent
17 with this Act.

18 (c) *EVIDENCE.*—Except as statutes otherwise provide,
19 the proponent of a rule or order shall have the burden of
20 proof. Any evidence, oral or documentary, may be received,
21 but every agency shall as a matter of policy provide for the
22 exclusion of immaterial and unduly repetitious evidence and
23 no sanction shall be imposed or rule or order be issued
24 except as supported by relevant, reliable, and probative evi-
25 dence. Every party shall have the right to present his case

1 or defense by oral or documentary evidence, to submit rebut-
 2 tal evidence, and to conduct such cross-examination as may
 3 be required for a full and true disclosure of the facts. In
 4 rule making or determining claims for money or benefits
 5 or applications for initial licenses any agency may, where
 6 the interest of any party will not be prejudiced thereby, adopt
 7 procedures for the submission of all or part of the evidence
 8 in written form.

9 (d) *RECORD*.—The transcript of testimony and exhibits,
 10 together with all papers and requests filed in the proceeding,
 11 shall constitute the exclusive record for decision in accordance
 12 with section 8 and, upon payment of lawfully prescribed
 13 costs, shall be made available to the parties. Where any
 14 agency decision rests on official notice of a material fact not
 15 appearing in the evidence in the record, any party shall on
 16 timely request be afforded an opportunity to show the
 17 contrary.

18 DECISIONS

19 *SEC. 8.* In cases in which a hearing is required to be
 20 conducted in conformity with section 7—

21 (a) *ACTION BY SUBORDINATES*.—In cases in which
 22 the agency has not presided at the reception of the evidence,
 23 the officer who presided (or, in cases not subject to subsection
 24 (c) of section 5, any other officer or officers qualified to
 25 preside at hearings pursuant to section 7) shall initially

1 *decide the case or the agency shall require (in specific cases*
2 *or by general rule) the entire record to be certified to it*
3 *for initial decision. Whenever such officers make the initial*
4 *decision and in the absence of either an appeal to the agency*
5 *or review upon motion of the agency within time provided*
6 *by rule, such decision shall without further proceedings then*
7 *become the decision of the agency. On appeal from or*
8 *review of the initial decisions of such officers the agency shall,*
9 *except as it may limit the issues upon notice or by rule, have*
10 *all the powers which it would have in making the initial*
11 *decision. Whenever the agency makes the initial decision*
12 *without having presided at the reception of the evidence, such*
13 *officers shall first recommend a decision except that in rule*
14 *making or determining applications for initial licenses (1)*
15 *in lieu thereof the agency may issue a tentative decision*
16 *or any of its responsible officers may recommend a decision*
17 *or (2) any such procedure may be omitted in any case in*
18 *which the agency finds upon the record that due and timely*
19 *execution of its function imperatively and unavoidably so*
20 *requires.*

21 *(b) SUBMITTALS AND DECISIONS.—Prior to each rec-*
22 *ommended, initial, or tentative decision, or decision upon*
23 *agency review of the decision of subordinate officers the parties*
24 *shall be afforded a reasonable opportunity to submit for the*
25 *consideration of the officers participating in such decisions*

1 (1) proposed findings and conclusions, or (2) exceptions
 2 to the decisions or recommended decisions of subordinate
 3 officers or to tentative agency decisions, and (3) supporting
 4 reasons for such exceptions or proposed findings or conclu-
 5 sions. All decisions (including initial, recommended, or
 6 tentative decisions) shall become a part of the record and
 7 include a statement of (1) findings and conclusions, as well
 8 as the basis therefor, upon all the material issues of fact, law,
 9 or discretion presented; and (2) the appropriate rule, order,
 10 sanction, relief, or denial thereof.

11 SANCTIONS AND POWERS

12 SEC. 9. In the exercise of any power or authority—

13 (a) IN GENERAL.—No sanction shall be imposed or
 14 substantive rule or order be issued except within jurisdiction
 15 delegated to the agency and as authorized by law.

16 (b) LICENSES.—In any case in which application is
 17 made for a license required by law the agency, with due regard
 18 to the rights or privileges of all the interested parties or ad-
 19 versely affected persons and with reasonable dispatch, shall
 20 set and complete any proceedings required to be conducted
 21 pursuant to sections 7 and 8 of this Act or other proceedings
 22 required by law and shall make its decision. Except in cases
 23 of willfulness or those in which public health, interest, or safety
 24 requires otherwise, no withdrawal, suspension, revocation, or
 25 annulment of any license shall be lawful unless, prior to the

1 institution of agency proceedings therefor, facts or conduct
 2 which may warrant such action shall have been called to the
 3 attention of the licensee by the agency in writing and the
 4 licensee shall have been accorded opportunity to demonstrate
 5 or achieve compliance with all lawful requirements. In any
 6 case in which the licensee has, in accordance with agency rules,
 7 made timely and sufficient application for a renewal or a new
 8 license, no license with reference to any activity of a con-
 9 tinuing nature shall expire until such application shall have
 10 been finally determined by the agency.

11 JUDICIAL REVIEW

12 SEC. 10. Except so far as (1) statutes preclude judicial
 13 review or (2) agency action is by law committed to agency
 14 discretion—

15 (a) RIGHT OF REVIEW.—Any person suffering legal
 16 wrong because of any agency action, or adversely affected or
 17 aggrieved by such action within the meaning of any relevant
 18 statute, shall be entitled to judicial review thereof.

19 (b) FORM AND VENUE OF ACTION.—The form of pro-
 20 ceeding for judicial review shall be any special statutory re-
 21 view proceeding relevant to the subject matter in any court
 22 specified by statute or, in the absence or inadequacy thereof,
 23 any applicable form of legal action (including actions for
 24 declaratory judgments or writs of prohibitory or mandatory
 25 injunction or habeas corpus) in any court of competent juris-

1 diction. Agency action shall be subject to judicial review in
2 civil or criminal proceedings for judicial enforcement except to
3 the extent that prior, adequate, and exclusive opportunity for
4 such review is provided by law.

5 (c) *REVIEWABLE ACTS.*—Every agency action made
6 reviewable by statute and every final agency action for which
7 there is no other adequate remedy in any court shall be subject
8 to judicial review. Any preliminary, procedural, or interme-
9 diate agency action or ruling not directly reviewable shall be
10 subject to review upon the review of the final agency action.
11 Except as otherwise expressly required by statute, agency
12 action shall be final whether or not there has been presented
13 or determined any application for a declaratory order, for
14 any form of reconsideration, or (unless the agency otherwise
15 requires by rule) for an appeal to superior agency authority.

16 (d) *INTERIM RELIEF.*—Pending judicial review any
17 agency is authorized, where it finds that justice so requires,
18 to postpone the effective date of any action taken by it. Upon
19 such conditions as may be required and to the extent necessary
20 to prevent irreparable injury, every reviewing court (includ-
21 ing every court to which a case may be taken on appeal from
22 or upon application for certiorari or other writ to a reviewing
23 court) is authorized to issue all necessary and appropriate
24 process to postpone the effective date of any agency action or

1 to preserve status or rights pending conclusion of the review
2 proceedings.

3 (e) SCOPE OF REVIEW.—So far as necessary to deci-
4 sion and where presented the reviewing court shall decide
5 all relevant questions of law, interpret constitutional and
6 statutory provisions, and determine the meaning or applica-
7 bility of the terms of any agency action. It shall (A) compel
8 agency action unlawfully withheld or unreasonably delayed;
9 and (B) hold unlawful and set aside agency action, findings,
10 and conclusions found to be (1) arbitrary, capricious, or
11 otherwise not in accordance with law; (2) contrary to con-
12 stitutional right, power, privilege, or immunity; (3) in
13 excess of statutory jurisdiction, authority, or limitations, or
14 short of statutory right; (4) without observance of procedure
15 required by law; (5) unsupported by substantial evidence
16 in any case subject to the requirements of sections 7 and 8 or
17 otherwise reviewed on the record of an agency hearing pro-
18 vided by statute; or (6) unwarranted by the facts to the
19 extent that the facts are subject to trial de novo by the
20 reviewing court. In making the foregoing determinations
21 the court shall review the whole record or such portions
22 thereof as may be cited by the parties, and due account shall
23 be taken of the rule of prejudicial error.

EXAMINERS

1
2 *SEC. 11. Subject to the civil-service and other laws to*
3 *the extent not inconsistent with this Act, there shall be ap-*
4 *pointed by and for each agency as many qualified and*
5 *competent examiners as may be necessary for proceedings*
6 *pursuant to sections 7 and 8, who shall be assigned to cases*
7 *in rotation so far as practicable and shall perform no duties*
8 *inconsistent with their duties and responsibilities as examin-*
9 *ers. Examiners shall be removable by the agency in which*
10 *they are employed only for good cause established and de-*
11 *termined by the Civil Service Commission (hereinafter called*
12 *the Commission) after opportunity for hearing and upon the*
13 *record thereof. Examiners shall receive compensation pre-*
14 *scribed by the Commission independently of agency recom-*
15 *mendations or ratings and in accordance with the Classifi-*
16 *cation Act of 1923, as amended, except that the provisions*
17 *of paragraphs (2) and (3) of subsection (b) of section 7*
18 *of said Act, as amended, and the provisions of section 9 of*
19 *said Act, as amended, shall not be applicable. Agencies*
20 *occasionally or temporarily insufficiently staffed may utilize*
21 *examiners selected by the Commission from and with the*
22 *consent of other agencies. For the purposes of this section,*
23 *the Commission is authorized to make investigations, require*

1 reports by agencies, issue reports, including an annual re-
2 port to the Congress, promulgate rules, appoint such advisory
3 committees as may be deemed necessary, recommend legisla-
4 tion, subpoena witnesses or records, and pay witness fees as
5 established for the United States courts.

6 CONSTRUCTION AND EFFECT

7 SEC. 12. Nothing in this Act shall be held to diminish
8 the constitutional rights of any person or to limit or repeal
9 additional requirements imposed by statute or otherwise recog-
10 nized by law. Except as otherwise required by law, all re-
11 quirements or privileges relating to evidence or procedure
12 shall apply equally to agencies and persons. If any provision
13 of this Act or the application thereof is held invalid, the
14 remainder of this Act or other applications of such provision
15 shall not be affected. Every agency is granted all authority
16 necessary to comply with the requirements of this Act through
17 the issuance of rules or otherwise. No subsequent legislation
18 shall be held to supersede or modify the provisions of this Act
19 except to the extent that such legislation shall do so expressly.
20 This Act shall take effect three months after its approval except
21 that sections 7 and 8 shall take effect six months after such
22 approval, the requirement of the selection of examiners pur-

1 suant to section 11 shall not become effective until one year
2 after such approval, and no procedural requirement shall be
3 mandatory as to any agency proceeding initiated prior to the
4 effective date of such requirement.

79TH CONGRESS
1ST Session

S. 7

[Report No. 752]

A BILL

To improve the administration of justice by
prescribing fair administrative procedure.

By Mr. McCARRAN

JANUARY 6, 1945

Read twice and referred to the Committee on the
Judiciary

NOVEMBER 19 (legislative day, October 29), 1945

Reported with an amendment

-3-

SENATE

11. ADMINISTRATIVE PROCEDURE. S. 7, prescribing administrative procedures for the executive agencies, was made the unfinished business (pp. 2084-9).
12. FOOD CONSERVATION. Sen. Smith, N.J., inserted former President Hoover's telegram to the Secretary outlining a plan for food conservation and commented favorably on the provisions of the plan (p. 2090).
13. FARM PRICES. Sen. Thomas, Okla., inserted his press statement summing up the farm-price situation, mentioning cotton prices in particular, and criticizing the OPA farm-price policy (pp. 2090-1).
14. ASSISTANT SECRETARIES. Received from this Department proposed legislation to establish two additional offices of Assistant Secretaries of Agriculture (p. 2079).
15. ST. LAWRENCE WATERWAY. Received a Camden County (N.J.) ChofC resolution opposing this project (p. 2079).
Sen. Aiken, Vt., inserted a New England Council letter opposing this project (pp. 2093-4).
16. PRICE CONTROL. Received a Wichita (Kans.) citizens' petition favoring continuation of the OPA (p. 2079).
17. LIVESTOCK AND MEAT; GRAZING; FORESTRY. Received Ariz. Cattle Growers' Assn. resolutions urging that on the discontinuance of beef-subsidy payments all price ceilings on beef also be discontinued, additional shipments of cotton-seed feed, that more Federal land be made available for grazing, and that adjustments be made in the administration of grazing on public lands (pp. 2080-1).
18. FLOOD CONTROL. Received a Kanas City (Kans.) ChofC resolution urging appropriations for flood control work in the Missouri valley region (p. 2079).
19. SUGAR SHORTAGE. Sen. Capper, Kans., inserted Paul Porter's (OPA) letter explaining the allocation of sugar for general use on the basis of the supply available (p. 2080).
20. ADJOURNED until Tues., Mar. 12 (p. 2098).

BILLS INTRODUCED

SURPLUS AGRICULTURAL COMMODITIES.

21. S. 1908, by Sen. Thomas, Okla. (for himself and Sens. Butler, Nebr., Aiken, Vt., Bilbo, Miss., Young, N. Dak., Shipstead, Minn., Stewart, Tenn., Bushfield, S. Dak., Willis, Ind., Connally, Tex., Capper, Kans., Wilson, Iowa, and Downey, Calif.), to provide for the maximum and most effective utilization of surplus agricultural commodities through increased industrial and other uses and through the development of improved methods of storing and marketing such commodities. To Agriculture and Forestry Committee. (p. 2082.)
22. AGRICULTURAL ADJUSTMENT ACT. S. 1918, by Sen. Bankhead, Ala., to amend the AAA act relating to marketing agreements and orders. To Agriculture and Forestry Committee. (p. 2082.)

ITEMS IN APPENDIX

23. FERTILIZER. Rep. Cooley, N.C., inserted an American Plant Food Council, Inc. statement indicating that "the fertilizer industry is making every effort to meet fully the plant-food requirements of American farmers" (pp. A1277-8).
24. ELECTRIFICATION. Sen. LaFollette, Jr., Wis., inserted his Natl. Rural Electric Cooperative Assn. address supporting the expansion of the rural-electrification program (pp. A1282-3).
Extension of remarks of Rep. Wickersham, Okla., discussing the progress made by REA since 1935 (p. A1298).
25. ST. LAWRENCE WATERWAY. Sen. Mead, N.Y., inserted Reginald P. Long's statement before S. Foreign Relations Committee and an Erie County Board of Supervisors' letter opposing this project (pp. A1289-90).
26. FARM INCOME. Extension of remarks of Rep. Murray, Wis., criticizing the Department's policy on supporting parity prices (p. A1294) and pointed out the low hourly return for labor on a farm (pp. A1295-6).
27. PRICE CONTROL. Sen. Hickenlooper, Iowa, inserted two Record-Herald and Indianola Tribune editorials favoring extension of price control and recommending changes in OPA policies (pp. A1285-6).
Sen. McFarland, Ariz., inserted an Ariz. Daily Star editorial opposing the continuation of price control (pp. A1286-7).
Rep. Cochran, Mo., inserted Chester Bowles' Natl. Farmers Union address favoring the continuation of price control in order to prevent inflation (pp. A1290-2).
Rep. Gross, Pa., inserted two constituents' letter criticizing OPA policies and favoring discontinuation of price control (pp. A1308-9).
Rep. Schwabe, Okla., inserted a constituent's letter opposing continuation of price control (pp. A1313-4).
Rep. Price, Ill., inserted a Progressive Mine Workers of America resolution supporting extension of price control (p. A1316).
28. FOREIGN RELIEF. Extension of remarks of Rep. Miller, Nebr., including a resume of his remarks on Town Meeting of the Air program, giving specific suggestions on what we must do to help feed Europe (p. A1297).
29. VETERANS. Extension of remarks of Rep. Hand, N.J., giving a brief analysis of amendments to the GI Bill of Rights (pp. A1300-1).
30. LABOR. Rep. Crawford, Mich., inserted a Natl. Grange Monthly article stating the farmers' interest in the Hobbs Antiracketeering measure (pp. A1301-2).
31. FORESTRY. Rep. Talle, Iowa, inserted his testimony before the House Appropriations Committee urging increases in Forest Service appropriations for experimental forestry work, farm and other private forestry cooperation, and research on forest products (pp. A1278-9).
Extension of remarks of Rep. Vursell, Ill., criticizing the OPA price regulations on lumber, and including a letter from the Ill. Lumber and Material Dealers' Assn. (pp. A1314-5).
32. SURPLUS PROPERTY. Rep. LeCompte, Iowa, inserted a Monroe County (Iowa) Conservation District Commissioners' resolution favoring the Poage bill, H.R. 538, to make surplus earth-moving equipment available for soil-conservation work (pp. A1304-5).

Second. By the sort of official muddled thinking which stimulated a disastrous wave of strikes. It invited labor to seek so-called "legitimate" wage increases in spite of the overwhelming national need for continued production at this crucial time.

Third. By an absurd, un-American price policy which OPA has bull-headedly followed—a policy which apparently regards industrial profits as sinful and unnecessary, a policy which decrees that management must pay wage increases out of whatever reserves may be available for other vital purposes, a policy which orders manufacturers to produce at a loss, which in effect, confiscates their profits without due process of law.

Fourth. By suffocating red tape and administrative delays in granting whatever little price relief has been given.

Fifth. By lack of integration within the Government—between Government agencies torn by internal conflicts and lacking centralized overhead planning.

Sixth. By intolerable delays in disposing of Federal surplus property. Such surplus could make a splendid contribution toward coping with the present crisis. They were forwarded to me today from Los Angeles pictures of mountains and fields of construction and building material declared surplus but unavailable to the public because of governmental red tape and freeze orders.

Seventh. By policies of apparent favoritism between companies by persons in high places who have forgotten their obligations as public servants.

In this connection, I desire to read excerpts from a letter I have received today from a prominent manufacturer.

This manufacturer cited an instance wherein one foundry had been granted a 200-percent price increase by OPA allegedly because, like Mr. Henry Kaiser, this foundry had an RFC loan. The manufacturer states in his letter:

It would appear from the above that the Government has had, and is going to continue to have, two entirely different policies in dealing with business. If a company has a loan from the RFC, the other agencies give price increases promptly to prevent losses; but if a company has no RFC loans, they are expected to absorb losses until the entire industry shows an out-of-pocket loss.

The policy toward companies with Government loans will certainly eliminate private business and encourage Government ownership. When a company signs an RFC agreement, it practically turns the management over to the RFC bureaucrats.

I respectfully request that you pass this information along to all opponents of Government ownership; and I am prepared to give you sworn statements to support the above.

Mr. President, I have asked for these sworn statements in order that the serious charges made by this manufacturer may be investigated.

Now, Mr. President, the amendment which I propose today cannot solve all of the various shortcomings I have cited. But it can help to solve those relating to maladministration of price controls.

As for the other shortcomings, they can be solved by legislation which will insure equity in labor-management relations, by leadership within Govern-

ment with guts and vision that will eliminate administrative wrangling and blundering, that will speed up the proper disposition of surplus property and that will cut out favoritism.

Some time ago, I proposed a Senate Committee on the Promotion of American Activities. That proposal has been referred to a subcommittee of the Judiciary Committee which, as yet, has neither met nor taken any action. The need for such a committee is obvious in the un-American rulings against our system of private profit, evidenced in O. P. A. Recently, I proposed in a public statement that "We get the Government out of the red and the Reds out of Government."

The conditions which I have cited prove the need for the realization of this slogan:

Mr. President, in connection with my remarks, I ask unanimous consent to have printed in the RECORD a telegram I have received from the directors of the Northwest Retailers Association, Inc.

There being no objection, the telegram was ordered to be printed in the RECORD, as follows:

MINNEAPOLIS, MINN., March 6, 1946.

HON. ALEXANDER WILEY,

Senate Office Building, Washington, D. C.

The directors of the Northwest Retailers Association, Inc., composed of leading merchants of Minnesota, North Dakota, and Wisconsin, representing department, dry goods, clothing and men's furnishings, shoe, and ladies' read-to-wear stores, adopted the following resolution on March 5, 1946:

"The retailers of the Northwest have been in favor of price control as a wartime measure and, in fact, have much more at stake than the average consumer in preventing inflation. We are in favor of extending price control to not later than June 30, 1947, but with the following changes:

"1. That the maximum average price regulation be withdrawn and rescinded immediately. It has failed to restore low-priced merchandise to the market, and has hindered and prevented the manufacture, and distribution to the consumer of much-needed goods.

"2. The sure cure for the dangers of inflation is all-out production of goods, which will quickly make price control unnecessary. We favor extension of incentive pricing for manufacturers to stimulate the production of goods which are vanishing because they are unprofitable to produce, or which have been discontinued for the same reason.

"3. OPA's cost absorption policy should be terminated immediately. It is unsound, unfair, and ruinous in its operation. Wages, materials, and all other operating expenses have increased materially since March 1942. Any prices established by OPA should recognize increased costs, and should allow a normal mark-up to the manufacturer, to the wholesaler or jobber, and to the retailer.

"4. We favor an accelerated program of decontrol. When supply and demand are closely in balance, that item should be promptly removed from price control.

"5. We favor legislation restoring jurisdiction to the district courts of the United States to hear and determine any questions which may arise under OPA regulations or orders."

H. S. MCINTYRE,
Secretary.

SPECIAL COMMITTEE ON ATOMIC ENERGY—INCREASE IN LIMIT OF EXPENDITURES

Mr. McMAHON submitted the following resolution (S. Res. 237), which was

referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

Resolved, That the limit of expenditures under Senate Resolution 179, Seventy-ninth Congress, first session, agreed to October 22, 1945, relating to the investigation of the development, use, and control of atomic energy, hereby is increased by \$30,000.

HEARINGS BEFORE COMMITTEE ON NAVAL AFFAIRS—INCREASE IN LIMIT OF EXPENDITURES

Mr. WALSH submitted the following resolution (S. Res. 238), which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

Resolved, That the Committee on Naval Affairs, authorized by Senate Resolution 9, agreed to January 6, 1945, to send for persons, books, and papers; to administer oaths; and to employ a stenographer, at a cost not exceeding 25 cents per hundred words, to report such hearings as may be had on any subject referred to said committee, hereby is authorized to expend from the contingent fund of the Senate, for the same purposes, during the Seventy-ninth Congress, \$10,000 in addition to the amount of \$5,000 heretofore authorized.

HOUSE BILLS REFERRED

The following bills were severally read twice by their titles and referred, as indicated:

H. R. 216. An act for the relief of John Seferian and Laura Seferian;

H. R. 988. An act for the relief of Bernice B. Cooper, junior clerk-typist, Weatherford, Tex., rural rehabilitation office, Farm Security Administration, Department of Agriculture;

H. R. 1235. An act for the relief of John Bell;

H. R. 1262. An act for the relief of W. E. Noah;

H. R. 1269. An act for the relief of Virge McClure;

H. R. 1352. An act for the relief of Herman Feinberg;

H. R. 1759. An act for the relief of Mildred Neiffer;

H. R. 2156. An act for the relief of Lee Harrison;

H. R. 2217. An act for the relief of Rae Glauber;

H. R. 2331. An act for the relief of Mrs. Grant Logan;

H. R. 2509. An act for the relief of the legal guardian of James Irving Martin, a minor;

H. R. 2682. An act for the relief of John Doshin;

H. R. 2750. An act for the relief of Stephen A. Bodkin, Charles A. Marlin, Andrew J. Perik, and Albert N. James;

H. R. 2848. An act for the relief of the legal guardian of Wilma Sue Woods, Patsy Woods, Raymond E. Hilliard, and Thomas E. Hilliard, minors;

H. R. 2885. An act for the relief of Mrs. Frank Mitchell and J. L. Price;

H. R. 2904. An act for the relief of Clyde Rownd, Delia Rownd, and Benjamin C. Day;

H. R. 3065. An act for the relief of Standard Dredging Corp.;

H. R. 3076. An act for the relief of the estate of Nellie P. Dunn, deceased;

H. R. 3100. An act for the relief of the legal guardian of Rolland Lee Frank, a minor;

H. R. 3161. An act for the relief of Mrs. Ruby Miller;

H. R. 3185. An act for the relief of the estate of Senia Lassila, deceased;

H. R. 3217. An act for the relief of Mattie Lee Wright;

H. R. 3355. An act for the relief of Elisabeth Jones Hansel;

H.R. 3365. An act for the relief of Kay Beth Bednar;
H.R. 3391. An act for the relief of Lawrence Portland Cement Co.;

H.R. 3400. An act for the relief of Herbert W. Rogers;

H.R. 3480. An act for the relief of Miss Ruth Lois Cummings;

H.R. 3483. An act for the relief of Mr. and Mrs. Cipriano Vasquez;

H.R. 3525. An act for the relief of Owen Young;

H.R. 3591. An act for the relief of Addie Pruitt;

H.R. 3823. An act for the relief of Gertrude McGill;

H.R. 3846. An act for the relief of the estate of Eleanor Wilson Lynde, deceased;

H.R. 3948. An act for the relief of Mrs. Clifford W. Prevatt;

H.R. 3985. An act for the relief of Kilpatrick Bros. Co.;

H.R. 4115. An act for the relief of the estate of Eleanor Doris Barrett;

H.R. 4174. An act for the relief of Mayer G. Hansen;

H.R. 4210. An act for the relief of the estate of Bob Clark and the estate of George D. Croft;

H.R. 4270. An act for the relief of Southern California Edison Co., Ltd.;

H.R. 4400. An act for the relief of Nolan V. Curry, individually, and as guardian for his minor son, Hershel Dean Curry;

H.R. 4401. An act for the relief of Joe F. Rada and Bessie Rada;

H.R. 4414. An act for the relief of Eva D. Champlin, Robert H. Howell, Emily Howell, and Stella Ward;

H.R. 4418. An act for the relief of the city of San Diego, Tex.;

H.R. 4537. An act for the relief of Lillian Jacobs;

H.R. 4607. An act for the relief of Margaret Lee and Mike Sopko;

H.R. 4609. An act for the relief of Jerome Dove;

H.R. 4647. An act for the relief of Albert R. Perkins;

H.R. 4693. An act for the relief of Richard C. Ward;

H.R. 4712. An act for the relief of Caroline M. Newmark and Melville Moritz; and

H.R. 4801. An act for the relief of Raymond P. Guidoboni; to the Committee on Claims.

H.R. 4208. An act for the relief of the Calvert Distilling Co.; to the Committee on Finance.

H.R. 4761. An act to amend the National Housing Act by adding thereto a new title relating to the prevention of speculation and excessive profits in the sale of housing, and to insure the availability of real estate for housing purposes at fair and reasonable prices, and for other purposes; to the Committee on Banking and Currency.

H.R. 5529. An act to authorize the President to appoint Lt. Gen. Walter B. Smith as Ambassador to the Union of Soviet Socialist Republics, without affecting his military status and perquisites; to the Committee on Military Affairs.

H.R. 5671. An act making appropriations to supply urgent deficiencies in certain appropriations for the fiscal year ending June 30, 1946, and for other purposes; to the Committee on Appropriations.

CRUCIAL IMPORTANCE OF SMALL INVESTORS—ADDRESS BY SENATOR WILEY

[Mr. WILEY asked and obtained leave to have printed in the RECORD an address entitled "The Investor: Key Man to American Industry," delivered by him before the Free Enterprise Forum of Investors' League at Buffalo, N. Y., February 28, 1946, and following thereafter three articles by Thomas Furlong published in the Chicago Tribune, which appear in the Appendix.]

MEDIATION AND ARBITRATION IN LABOR DISPUTES—ADDRESS BY SENATOR LA FOLLETTE

[Mr. LA FOLLETTE asked and obtained leave to have printed in the RECORD an address on the labor situation delivered by him before the United Labor Committee to Aid the UAW-GM Strikers, at New York, N. Y., February 25, 1946, which appears in the Appendix.]

RURAL ELECTRIFICATION—ADDRESS BY SENATOR LA FOLLETTE

[Mr. LA FOLLETTE asked and obtained leave to have printed in the RECORD an address on rural electrification delivered by him before the National Rural Electric Cooperative Association at Buffalo, N. Y., Tuesday, March 5, 1946, which appears in the Appendix.]

ADDRESS BY SENATOR HILL AT TESTIMONIAL DINNER TO GEN. HENRY H. ARNOLD

[Mr. HILL asked and obtained leave to have printed in the RECORD an address delivered by him at a testimonial dinner tendered by the Army Air Forces to Gen. Henry H. Arnold, the commanding general of the Army Air Forces, in Washington, D. C., on February 9, 1946, which appears in the Appendix.]

WASHINGTON'S BIRTHDAY ADDRESS BY SENATOR LANGER

[Mr. LANGER asked and obtained leave to have printed in the RECORD an address delivered by him at Minneapolis, Minn., on Washington's Birthday, before the George Washington Club, which appears in the Appendix.]

UPTON CLOSE—COMMENT BY ALBERT L. WARNER

[Mr. PEPPER asked and obtained leave to have printed in the RECORD an excerpt from the 6 p. m. newscast of Albert L. Warner, director of the Washington news staff of WOL, delivered Wednesday, March 6, 1946, which appears in the Appendix.]

STATEMENT IN OPPOSITION TO COMPULSORY TRAINING BY DR. JOHN R. SAMPEY

[Mr. STANFILL asked and obtained leave to have printed in the RECORD a statement in opposition to compulsory military training entitled "A Worshiper of Lee Renounces War," by Dr. John R. Sampey, of the Southern Baptist Theological Seminary at Louisville, Ky., which appears in the Appendix.]

THE GENERAL MOTORS STRIKE—EDITORIAL FROM THE LOUISVILLE COURIER-JOURNAL

[Mr. STANFILL asked and obtained leave to have printed in the RECORD an editorial regarding the General Motors strike, from the Louisville Courier-Journal of March 5, 1946, which appears in the Appendix.]

THE ST. LAWRENCE SEAWAY

[Mr. MEAD asked and obtained leave to have printed in the RECORD a statement regarding the St. Lawrence seaway by Reginald P. Long, supervisor of Grand Island, Erie County, N. Y., together with resolutions adopted by the board of supervisors of Erie County, N. Y., which appear in the Appendix.]

CONTROL OF ATOMIC ENERGY—ARTICLE BY GEORGE FIELDING ELIOT

[Mr. McMAHON asked and obtained leave to have printed in the RECORD an article on the control of atomic energy, written by George Fielding Eliot and published in a recent issue of the New York Herald Tribune, which appears in the Appendix.]

THE FIGHT AGAINST CANCER—ARTICLE BY ERIC A. JOHNSTON

[Mr. McMAHON asked and obtained leave to have printed in the RECORD an article entitled "The Doctors Are Out To Conquer Cancer, and They Need Your Help" written by Eric A. Johnston, and published in the Reader's Digest for March 1946, which appears in the Appendix.]

THE OPA—EDITORIAL COMMENTS BY THE RECORD-HERALD AND INDIANOLA TRIBUNE

[Mr. HICKENLOOPER asked and obtained leave to have printed in the RECORD an editorial entitled "We Need OPA, but Let's Delouse It," from the Record-Herald and Indianola Tribune of February 21, 1946, and an editorial entitled "OPA in a Glass House" from the same newspapers of the issue of February 28, 1946, which appear in the Appendix.]

SMEAR CAMPAIGN BY JEWELRY MANUFACTURERS—EDITORIAL FROM THE MINERAL COUNTY INDEPENDENT-NEWS

[Mr. CARVILLE asked and obtained leave to have printed in the RECORD an editorial entitled "Smear Campaign by Jewelry Manufacturers," from the Mineral County Independent-News of February 26, 1946, which appears in the Appendix.]

PRICE CONTROLS—EDITORIAL FROM ARIZONA DAILY STAR

[Mr. McFARLAND asked and obtained leave to have printed in the RECORD an editorial entitled "Let Us End the Controls," published in the Arizona Daily Star of February 28, 1946, which appears in the Appendix.]

ADMINISTRATIVE PROCEDURE ACT

Mr. McCARRAN. Mr. President, I should like to have the attention of the leaders on both sides to the request I am about to make. I ask unanimous consent that S. 7, the administrative procedure bill, which was reported from the Judiciary Committee in November last, be made the unfinished business, with the understanding that it will go over until the next session of the Senate, which I understand will be on Tuesday. I ask unanimous consent that S. 7 be made the unfinished business.

The PRESIDENT pro tempore. The bill will be stated by title for the information of the Senate.

The CHIEF CLERK. A bill (S. 7) to improve the administration of justice by prescribing fair administrative procedure.

The PRESIDENT pro tempore. Is there objection to the request of the Senator from Nevada?

Mr. BARKLEY. Mr. President, it is not necessary to ask unanimous consent, inasmuch as what the Senator desires could be accomplished by a motion. I have no objection, however to making the bill the unfinished business. I hope that Senators will take advantage of the week end to study this measure. It is a modified form of the so-called Logan-Walter bill, which, as I recall, Congress passed several years ago and which was vetoed by the President. I think that is correct. I myself have not studied the proposed modifications because I have not had the time. I shall attempt to do so over the week end, and I hope other Senators will study the bill, because it is a complicated subject

and involves, or did involve in the previous legislation, what seems to me to be great handicaps in carrying out the administrative policies of the Government as directed by Congress.

I am not passing any judgment on this bill, because I have not had a chance to study it. I am merely expressing the hope that the Senate will study the bill before next Tuesday—we intend to recess until Tuesday after today's session—because it is a very important piece of legislation both from the standpoint of those who are for and those who are against it.

The PRESIDENT pro tempore. Is there objection to the request of the Senator from Nevada that Senate bill 7 be made the unfinished business?

Mr. WHITE. Mr. President, reserving the right to object, in view of what the majority leader has said, I inquire if it would not be appropriate to have a quorum called.

Mr. BARKLEY. I have no objection to a quorum call, although I do not think one is necessary in order to make it possible for the Senate to agree to make the bill the unfinished business, unless a Senator who is not now on the floor may desire to object. But even if objection were registered, the Senator from Nevada could move to make the bill the unfinished business.

Mr. WHITE. I was merely seeking to protect the interests of those who might be absent at the moment.

Mr. BARKLEY. Two or three important hearings, with important witnesses, are now in progress, and I think it might disturb that situation if we called Senators to the Chamber at this time. But whatever the Senator desires to have done is agreeable to me.

Mr. WHITE. I shall not object.

The PRESIDENT pro tempore. Is there objection to the request of the Senator from Nevada?

There being no objection, the Senate proceeded to consider the bill (S. 7) to improve the administration of justice by prescribing fair administrative procedure, which had been reported from the Committee on the Judiciary with an amendment to strike out all after the enacting clause and insert:

That this act may be cited as the "Administrative Procedure Act."

DEFINITIONS

SEC. 2. As used in this act—

(a) Agency: "Agency" means each authority (whether or not within or subject to review by another agency) of the Government of the United States other than Congress, the courts, or the governments of the possessions, Territories, or the District of Columbia. Nothing in this act shall be construed to repeal delegations of authority as provided by law. Except as to the requirements of section 3, there shall be excluded from the operation of this act (1) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them, (2) courts martial and military commissions, (3) military or naval authority exercised in the field in time of war or in occupied territory, or (4) functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947, and the functions conferred by the following statutes:

Selective Training and Service Act of 1940; Contract Settlement Act of 1944; Surplus Property Act of 1944.

(b) Person and party: "Person" includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies. "Party" includes any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any agency proceeding; but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes.

(c) Rule and rule making: "Rule" means the whole or any part of any agency statement of general applicability designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of any agency. "Rule making" means agency process for the formulation, amendment, or repeal of a rule and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor, or of valuations, costs, or accounting, or practices bearing upon any of the foregoing.

(d) Order and adjudication: "Order" means the whole or any part of the final disposition (whether affirmative, negative, or declaratory in form) of any agency in any matter other than rule making but including licensing. "Adjudication" means agency process for the formulation of an order.

(e) License and licensing: "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, membership, statutory exemption, or other form of permission. "Licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license.

(f) Sanction and relief: "Sanction" includes the whole or part of any agency (1) prohibition, requirement, limitation, or other condition affecting the freedom of any person; (2) withholding of relief; (3) imposition of any form of penalty or fine; (4) destruction, taking, seizure, or withholding of property; (5) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees; (6) requirement, revocation, or suspension of a license; or (7) taking of other compulsory or restrictive action. "Relief" includes the whole or part of any agency (1) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy; (2) recognition of any claim, right, immunity, privilege, exemption, or exception; or (3) taking of any other action beneficial to any person.

(g) Agency proceeding and action: "Agency proceeding" means any agency process as defined in subsections (c), (d), and (e) of this section. For the purpose of section 10, "agency action" includes the whole or part of every agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.

PUBLIC INFORMATION

SEC. 3. Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of an agency—

(a) Rules: Every agency shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organization; (2) the established places and methods whereby the public may secure information or make submittals or requests; (3) statements of the general course and method by which its rule making and adjudicating functions are channeled and determined, including the nature and requirements of all formal or informal procedures

available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations; and (4) substantive rules adopted as authorized by law and statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public. No person shall in any manner be required to resort to organization or procedure not so published.

(b) Opinions and orders: Every agency shall publish or, in accordance with published rule, make available to public inspection all final opinions or orders in the adjudication of cases except those required for good cause to be held confidential and not cited as precedents.

(c) Public records: Save as otherwise required by statute, matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found.

RULE MAKING

SEC. 4. Except to the extent that there is involved (1) any military, naval, or foreign affairs function of the United States or (2) any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts—

(a) Notice: General notice of proposed rule making shall be published in the Federal Register and shall include (1) a statement of the time, place, and nature of public rule making proceedings; (2) reference to the authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved. Except where notice or hearing is required by statute, this subsection shall not apply to interpretative rules, general statements of policy, rules of agency organization, procedure, or practice, or in any situation in which the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(b) Procedures: After notice required by this section, the agency shall afford interested persons an opportunity to participate in the rule making through submission of written data, views, or argument with or without opportunity to present the same orally in any manner; and, after consideration of all relevant matter presented, the agency shall incorporate in any rules adopted a concise general statement of their basis and purpose. Where rules are required by law to be made upon the record after opportunity for or upon an agency hearing, the requirements of sections 7 and 8 shall apply in place of the provisions of this subsection.

(c) Effective dates: The required publication or service of any substantive rule (other than one granting or recognizing exemption or relieving restriction or interpretative rules and statements of policy) shall be made not less than 30 days prior to the effective date thereof except as otherwise provided by the agency upon good cause found and published with the rule.

(d) Petitions: Every agency shall accord any interested person the right to petition for the issuance, amendment, or repeal of a rule.

ADJUDICATION

SEC. 5. In every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved (1) any matter subject to a subsequent trial of the law and the facts de novo in any court; (2) the selection or tenure of an officer or employee of the United States other than examiners appointed pursuant to section 11; (3) proceedings in which decisions rest solely on inspections, tests, or

elections; (4) the conduct of military, naval, or foreign affairs functions; (5) cases in which an agency is acting as an agent for a court; and (6) the certification of employee representatives—

(a) Notice: Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, and nature thereof; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) the matters of fact and law asserted. In instances in which private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the times and places for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(b) Procedure: The agency shall afford all interested parties opportunity for (1) the submission and consideration of facts, argument, offers of settlement, or proposals of adjustment where time, the nature of the proceeding, and the public interest permit and (2), to the extent that the parties are unable so to determine any controversy by consent, hearing and decision upon notice and in conformity with sections 7 and 8.

(c) Separation of functions: The same officers who preside at the reception of evidence pursuant to section 7 shall make the recommended decision or initial decision required by section 8 except where such officers become unavailable to the agency. Save to the extent required for the disposition of ex parte matters as authorized by law, no such officer shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate; nor shall such officer be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency. No officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency in any case shall, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 8 except as witness or counsel in public proceedings. This subsection shall not apply in determining applications for initial licenses or the past reasonableness of rates; nor shall it be applicable in any manner to the agency or any member or members of the body comprising the agency.

(d) Declaratory orders: The agency is authorized in its sound discretion, with like effect as in the case of other orders, to issue a declaratory order to terminate a controversy or remove uncertainty.

ANCILLARY MATTERS

SEC. 6. Except as otherwise provided in this act—

(a) Appearance: Any person compelled to appear in person before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. Every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in any agency proceeding. So far as the responsible conduct of public business permits, any interested person may appear before any agency or its responsible officers or employees for the presentation, adjustment, or determination of any issue, request, or controversy in any proceeding or in connection with any agency function, including stop-order or other summary actions. Every agency shall proceed with reasonable dispatch to conclude any matter presented to it except that due regard shall be had for the convenience and necessity of the parties or their representatives. Nothing herein shall be construed either to grant or to deny to any person who is not a lawyer the right

to appear for or represent others before any agency or in any agency proceeding.

(b) Investigations: No process, requirement of a report, inspection, or other investigative act or demand shall be issued, made, or enforced in any manner or for any purpose except as authorized by law. Every person compelled to submit data or evidence shall be entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a non-public investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

(c) Subpenas: Agency subpoenas authorized by law shall be issued to any party upon request and, as may be required by rules of procedure, upon a statement or showing of general relevance and reasonable scope of the evidence sought. Upon contest the court shall sustain any such subpoena or similar process or demand to the extent that it is found to be in accordance with law and, in any proceeding for enforcement, shall issue an order requiring the appearance of the witness or the production of the evidence or data under penalty of punishment for contempt in case of contumacious failure to do so.

(d) Denials: Prompt notice shall be given of the denial in whole or in part of any written application, petition, or other request of any interested person made in connection with any agency proceeding. Except in affirming a prior denial or where the denial is self-explanatory, such notice shall be accompanied by a simple statement of grounds.

HEARINGS

SEC. 7. In hearings which section 4 or 5 requires to be conducted pursuant to this section—

(a) Presiding officers: There shall preside at the taking of evidence (1) the agency, (2) one or more members of the body which comprises the agency, or (3) one or more examiners appointed as provided in this act; but nothing in this act shall be deemed to supersede the conduct of specified classes of proceedings in whole or part by or before boards or other officers specially provided for by or designated pursuant to statute. The functions of all presiding officers and of officers participating in decisions in conformity with section 8 shall be conducted in an impartial manner. Any such officer may at any time withdraw if he deems himself disqualified; and, upon the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification of any such officer, the agency shall determine the matter as a part of the record and decision in the case.

(b) Hearing powers: Officers presiding at hearings shall have authority, subject to the published rules of the agency and within its powers, to (1) administer oaths and affirmations, (2) issue subpoenas authorized by law, (3) rule upon offers of proof and receive relevant evidence, (4) take or cause depositions to be taken whenever the ends of justice would be served thereby, (5) regulate the course of the hearing, (6) hold conferences for the settlement or simplification of the issues by consent of the parties, (7) dispose of procedural requests or similar matters, (8) make decisions or recommend decisions in conformity with section 8, and (9) take any other action authorized by agency rule consistent with this act.

(c) Evidence: Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. Any evidence, oral or documentary, may be received, but every agency shall as a matter of policy provide for the exclusion of immaterial and unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except as supported by relevant, reliable, and probative evidence. Every party shall have the right to present his case or defense by oral or docu-

mentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses any agency may, where the interest of any party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(d) Record: The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision in accordance with section 8 and, upon payment of lawfully prescribed costs, shall be made available to the parties. Where any agency decision rests on official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the contrary.

DECISIONS

SEC. 8. In cases in which a hearing is required to be conducted in conformity with section 7—

(a) Action by subordinates: In cases in which the agency has not presided at the reception of the evidence, the officer who presided (or, in cases not subject to subsection (c) of section 5, any other officer or officers qualified to preside at hearings pursuant to section 7) shall initially decide the case or the agency shall require (in specific cases or by general rule) the entire record to be certified to it for initial decision. Whenever such officers make the initial decision and in the absence of either an appeal to the agency or review upon motion of the agency within time provided by rule, such decision shall without further proceedings then become the decision of the agency. On appeal from or review of the initial decisions of such officers the agency shall, except as it may limit the issues upon notice or by rule, have all the powers which it would have in making the initial decision. Whenever the agency makes the initial decision without having presided at the reception of the evidence, such officers shall first recommend a decision except that in rule making or determining applications for initial licenses (1) in lieu thereof the agency may issue a tentative decision or any of its responsible officers may recommend a decision or (2) any such procedure may be omitted in any case in which the agency finds upon the record that due and timely execution of its function imperatively and unavoidably so requires.

(b) Submittals and decisions: Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings or conclusions. All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the basis therefor, upon all the material issues of fact, law, or discretion presented; and (2) the appropriate rule, order, sanction, relief, or denial thereof.

SANCTIONS AND POWERS

SEC. 9. In the exercise of any power or authority—

(a) In general: No sanction shall be imposed or substantive rule or order be issued except within jurisdiction delegated to the agency and as authorized by law.

(b) Licenses: In any case in which application is made for a license required by law the agency, with due regard to the rights or privileges of all the interested parties or

adversely affected persons and with reasonable dispatch, shall set and complete any proceedings required to be conducted pursuant to sections 7 and 8 of this act or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, no withdrawal, suspension, revocation, or annulment of any license shall be lawful unless, prior to the institution of agency proceedings therefor, facts or conduct which may warrant such action shall have been called to the attention of the licensee by the agency in writing and the licensee shall have been accorded opportunity to demonstrate or achieve compliance with all lawful requirements. In any case in which the licensee has, in accordance with agency rules, made timely and sufficient application for a renewal or a new license, no license with reference to any activity of a continuing nature shall expire until such application shall have been finally determined by the agency.

JUDICIAL REVIEW

SEC. 10. Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—

(a) Right of review: Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

(b) Form and venue of action: The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. Agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.

(c) Reviewable acts: Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. Except as otherwise expressly required by statute, agency action shall be final whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule) for an appeal to superior agency authority.

(d) Interim relief: Pending judicial review any agency is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, every reviewing court (including every court to which a case may be taken on appeal from or upon application for certiorari or other writ to a reviewing court) is authorized to issue all necessary and appropriate process to postpone the effective date of any agency action or to preserve status or rights pending conclusion of the review proceedings.

(e) Scope of review: So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, or otherwise not in accordance with law; (2) contrary to constitu-

tional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the fact to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by the parties, and due account shall be taken of the rule of prejudicial error.

EXAMINERS

SEC. 11. Subject to the civil-service and other laws to the extent not inconsistent with this act, there shall be appointed by and for each agency as many qualified and competent examiners as may be necessary for proceedings pursuant to sections 7 and 8, who shall be assigned to cases in rotation so far as practicable and shall perform no duties inconsistent with their duties and responsibilities as examiners. Examiners shall be removable by the agency in which they are employed only for good cause, established and determined by the Civil Service Commission (hereinafter called the Commission) after opportunity for hearing and upon the record thereof. Examiners shall receive compensation prescribed by the Commission independently of agency recommendations or ratings and in accordance with the Classification Act of 1923, as amended, except that the provisions of paragraphs (2) and (3) of subsection (b) of section 7 of said act, as amended, and the provisions of section 9 of said act, as amended, shall not be applicable. Agencies occasionally or temporarily insufficiently staffed may utilize examiners selected by the Commission from and with the consent of other agencies. For the purposes of this section, the Commission is authorized to make investigations, require reports by agencies, issue reports, including an annual report to the Congress, promulgate rules, appoint such advisory committees as may be deemed necessary, recommend legislation, subpoena witnesses or records, and pay witness fees as established for the United States courts.

CONSTRUCTION AND EFFECT

SEC. 12. Nothing in this act shall be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. If any provision of this act or the application thereof is held invalid, the remainder of this act or other applications of such provision shall not be affected. Every agency is granted all authority necessary to comply with the requirements of this act through the issuance of rules or otherwise. No subsequent legislation shall be held to supersede or modify the provisions of this act except to the extent that such legislation shall do so expressly. This act shall take effect 3 months after its approval except that sections 7 and 8 shall take effect 6 months after such approval, the requirement of the selection of examiners pursuant to section 11 shall not become effective until 1 year after such approval, and no procedural requirement shall be mandatory as to any agency proceeding initiated prior to the effective date of such requirement.

Mr. McCARRAN. Mr. President, Senate bill 7, the administrative procedure measure, was reported and placed on the calendar of the Senate in November last, after nearly a year and a half of very careful consideration and study by the Department of Justice, by other de-

partments, and by the Committee on the Judiciary of the Senate. We have attempted in every way possible to explain the bill by graphs which have been laid on the desks of Senators from time to time, some of which are now, today, on our desks. We have submitted a report on the bill which is on the desks of Senators this morning, a most detailed report, which goes into every phase of the bill, so that any Senator who will make a study of it in my judgment can know what the bill pertains to and what it proposes to do.

I have on several occasions, as the record will show, advised the Senate that in the near future I would bring the bill forward for consideration, in order that the Senate and Senators individually might make a study of it before it was proceeded with on the floor.

I implore my colleagues at this time to make a study of this bill before Tuesday next, because I hope we may go forward with this very important legislative proposal.

Mr. McCARRAN subsequently said: In connection with some brief remarks which I made earlier in the day with reference to Senate bill 7, the administrative law bill, I ask unanimous consent to have inserted in the RECORD in connection with those remarks a very scholarly address delivered by the Attorney General of the United States, Mr. Tom Clark.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

At your annual meeting in 1916, Elihu Root, as president of your association, made a memorable address on the subject of public service by the bar.

In the course of his speech he had occasion to recognize the inevitable development of a system of administrative law.

In this country, he said, such a system, "is still in its infancy."

The "infant" to which Mr. Root referred had had an extraordinary growth since that time.

So precocious has it shown itself that for the past 20 years it has been perhaps the primary subject of discussion among legal thinkers.

Some have considered the infant prodigy as a threat to our democracy—an alien system—a contrivance of self-seeking bureaucrats.

Others, with whom I agree, have recognized that the administrative process has had to expand to meet the needs of an increasingly complex civilization.

Full recognition, it seems to me, has not been given to the fact that the phenomenal events—two world wars of catastrophic proportions, and an intervening financial depression, all in one generation.

The belief is fairly common that the administrative process in the Federal Government is new—that it is wholly a creation of the present era.

Not at all. It is as old as the Government itself.

At the very first session of the First Congress under the Constitution, statutes were enacted conferring important administrative powers.

In that year—1789—the Congress passed laws involving the administration of customs and the regulation of ocean-going vessels—laws which are the antecedents of statutes now administered by the Bureau of Customs in the Treasury Department.

At that time the first pension law was passed—the first of a long series of pension laws now in the charge of the Veterans' Administration.

Payments to invalid pensioners were to be made under regulations issued by the President—an early recognition by Congress of the advantage of delegating to the Executive broad rule-making power within the framework of statutory policies.

In 1790, Congress initiated the succession of laws governing the issuing and recording of patents.

The Secretary of State, the Secretary of War, and the Attorney General of the United States were empowered to grant a patent to any person petitioning for it, if his invention or discovery were deemed "sufficiently useful and important."

In 1796, provision was made for trading with the Indians according to such rules as the President should prescribe.

In fact, the growth of the administrative process may be said to follow the path of the growth of the Union.

As problems have been encountered, they have been met—sometimes too quickly, it is true—sometimes not quickly enough.

To meet emergency problems, policies must be debated and adopted, appropriate governmental agencies must be established, appropriate procedures must be put into effect.

While hasty legislation is to be deplored, the lack of legislation may bring a result which will be mourned as "too little and too late."

It was the growth of steam navigation which gave rise in 1838 to "an act to provide for the better security of the lives of passengers on board of vessels propelled in whole or in part by steam."

This act made it unlawful for an owner of a steamboat to operate without a license from the collector of the port.

It was the rapid expansion of railroads, accompanied by discriminatory rate adjustments, irresponsible financial manipulation, and speculation, that led to the enactment in 1887 of "an act to regulate commerce," creating the Interstate Commerce Commission.

The creation of other agencies, to meet the needs of changing times, has steadily continued, in the State governments as well as the Federal.

The great advantage of administrative agencies is their flexibility, their capacity to do a complex task fairly and with dispatch.

A few weeks ago I read the fifth quarterly report of the Office of Contract Settlement.

I was amazed by the tremendous progress which has been made in settling terminated war contracts through administrative action.

The surrender of Japan caused the termination of over 100,000 prime contracts, involving \$24,000,000,000 in canceled commitments. Add to this the contracts that were terminated by VE-day and you have some realization of the gigantic task faced by the War and Navy Departments and by the Office of Contract Settlement.

Some 288,000 prime contracts, involving \$62,000,000,000 in canceled commitments, have been terminated from the beginning of our war production to date.

Of these, some 185,000 contracts, involving over \$25,000,000,000, have now been settled.

Similar records of accomplishment may be found in other administrative agencies.

The Interstate Commerce Commission receives, analyzes, and files thousands of rate schedules, applications, and complaints.

Yet that is only a part of its work.

The Social Security Board keeps literally millions of records, and disposes of eight or nine hundred thousand claims a year.

The Grain Standards Administration in the Department of Agriculture supervises over a million gradings of grain annually.

In the light of these few examples, it is no wonder that Congress has resorted more and more frequently to the administrative process as an instrument for the execution of its legislative policies.

An examination of an act with which we are all familiar—the Selective Training and

Service Act—will serve to illustrate the manner in which the Congress has placed broad rule-making and adjudicatory functions in a single agency.

In this statute Congress wisely refrained from seeking to control every possible aspect of the induction process.

Instead, Congress incorporated into the act a general statement of the policy to be pursued in inducting men into the armed forces.

It has delegated to the President the power to make such rules and regulations as may be necessary to carry out the congressional policy.

The President, under the express authority of the act, has delegated broad powers to the Director of Selective Service.

The Director, by virtue of his highly specialized duties, is in a position to know the day-to-day needs of the armed forces and the manner in which those needs can best be met.

The Director has been able to weigh such considerations as age, occupation, and family status in formulating the rules guiding induction.

It is these rules, promulgated by the Director of Selective Service, that have given the act its flexibility and vitality.

In addition to the grant of rule-making power, the Selective Training and Service Act makes provision for the performance of quasi-judicial functions within the administrative framework.

Registrants who are dissatisfied with their classification may ask for a hearing to obtain a deferment, or a different classification.

The local selective service board hears and decides such complaints.

Should the registrant be dissatisfied with the decision of the local board, he has recourse to a local board of appeal and, in exceptional circumstances, to the President of the United States.

Such are the manifold administrative remedies which the act provides.

The administrative process, of course, has not been free of criticism.

Some of this criticism has been based on a disapproving view of the legislative policies which the agencies are bound by law to execute.

Some of it has been based on dissatisfaction—sometimes no doubt justified—with the procedures followed by some of the agencies.

Many members of the bar have vigorously opposed the growth of the administrative process.

This opposition, to quote Chief Justice Stone, is "reminiscent of the distrust of equity displayed by the common-law judges and of their resistance to its expansion."

Instead of resisting its growth, he added, the legal profession should seek "to adopt the undoubted advantages of the new agencies as efficient working implements of government, surrounded, at the same time, with every needful guarantee against abuse."

Your association, over a period of many years, has taken a very keen interest in problems of administrative law and procedure.

Your special committee on administrative law, since its formation in 1933, has steadily sought to have Congress enact regulatory legislation in this field.

And I think it is fair to say that we, in the Government, have also worked hard in the same general field in an effort to improve our procedures. As defects have been pointed out, we have tried to correct them.

We have tried to make of the administrative process an efficient and, withal, fair implement for the proper functioning of government.

In 1939, President Roosevelt directed Attorney General Murphy to select a committee of eminent lawyers, jurists, scholars, and administrators to investigate the need for

procedural reform in the field of administrative law.

For 2 years this committee on administrative procedure examined carefully the workings of the more important administrative agencies.

In 1941, its full report was given to the President and to the Congress.

The committee made a number of specific recommendations for the improvement of the procedures of particular agencies—recommendations which, in the main, have been adopted.

In addition, the majority of the committee made general recommendations, embodied in a bill which it prepared for submission to Congress.

Further effort looking toward general legislation in the field of administrative law was in large measure necessarily suspended during the war years.

A number of bills on this subject have, however, been introduced in the present session of Congress.

I should like to speak particularly of the McCarran-Sumners bill.

For the past several months your special committee on administrative law and the Department of Justice have collaborated with the Judiciary Committees of both Houses, at their specific request, in seeking to arrive at a final draft of the McCarran-Sumners bill which would be acceptable to all interests concerned.

I think the hard work which has thus been carried on has been rewarded with success.

The final draft of the McCarran-Sumners bill, recently reported favorably by the Senate Judiciary Committee, may be described as a restatement of the law of due process for administrative agencies.

It establishes minimum procedural requirements in terms applicable to all administrative agencies of the Federal Government.

Broad general principles are laid down with a sufficient degree of definiteness to protect the public in its dealings with the Government.

Recognition has been given to the fact that not every function of governmental agencies can be regulated uniformly.

Their functions are far too varied for an over-generalized approach.

Adjudications of disputes between citizens, for example, are to be sharply distinguished from such matters as disposals of surplus Government property.

Accordingly, appropriate exceptions have been made, not of agencies as such, but of certain of their functions.

War and defense functions, for example, are exempted from all the provisions of the bill except the section requiring increased public information.

Appropriate exceptions, too, have been made of functions of the United States requiring secrecy in the public interest, such as the confidential operations of the Secret Service and the Federal Bureau of Investigation.

The paramount public interest is also appropriately recognized.

Thus, while the general rule is that agencies must publish notice of proposed rule-making in the Federal Register, such notice need not be given where it is contrary to the public interest.

Yet, in such circumstances, an agency must make a finding to that effect and incorporate a brief statement of the reasons therefor in the rules issued.

The basic scheme underlying this legislation is to classify all administrative proceedings into two general categories, namely, rule-making and adjudication.

But the bill does not specify the agencies which have rule-making powers and adjudicatory functions.

To determine that, reference must be made to the special laws Congress has enacted for a particular agency.

Proceedings are classed as rule-making under the bill, not merely when they result in regulations of general applicability (something akin to the legislative process), but also in certain cases involving subject matter demanding judgments based on a wide range of technical knowledge and experience, such as corporate reorganizations and prescription of rates for the future.

Proceedings are considered as adjudications, on the other hand, when the element of accusation is strong, and individual compliance or behavior is challenged.

It is important to bear in mind the essential difference between these two types of proceedings in order to understand why the doctrine of segregation of functions is applicable only to adjudication.

Adjudication, being quasi-judicial in character, must be conducted in quasi-judicial fashion.

For this reason, the examiner who presides at the hearing in such a proceeding is forbidden to consult with any person or party on any fact in issue unless upon notice and opportunity for all parties to participate.

Further, such an officer is not to be responsible to or subject to the supervision or direction of any person engaged in the performance of investigative or prosecuting functions.

The purpose is to divorce the trier of facts from the prosecutor.

Such a separation of functions will be found today in most, if not all, Federal agencies.

A separation of this sort, however, would be completely unrealistic if applied to rule-making, since there the presiding officer is not a trier of facts.

He sits to determine the advisability of the enactment of a rule, and should be allowed to call on all available sources for his information, including the highly specialized knowledge of the members of the agency staff.

In adjudications, the presiding examiner will generally be required to make a decision or recommend a decision.

In rule-making, the agency may in its discretion dispense with the decision of the examiner.

Some of the agencies, such as the Federal Communications Commission, find that in a field as highly technical as theirs the report of an examiner is not of great value or importance in the formulating rules.

But such a report is of fundamental importance in formal adjudications. Here, in view of the adversary nature of the proceeding, the presiding officer must evaluate evidence and consider the credibility of the witnesses.

I shall not attempt to cover all the provisions of the bill in the brief space of time remaining.

Of particular importance to the public, and to the legal profession as well, is the requirement that administrative agencies publish, or make available, an increased measure of information concerning their organizations, functions, and procedures.

I should also mention the requirement that trial examiners be appointed for each agency to conduct formal hearings.

They are to perform no duties inconsistent with their functions as examiners, and are to receive compensation prescribed by the Civil Service Commission.

The conditions of their tenure are designed to insure their impartiality and independence of judgment.

The section of judicial review of administrative action will be of particular interest to this audience.

Its provisions, while fully safeguarding the rights of aggrieved individuals, will not in my judgment hamper the proper conduct of administrative business, thus there is no right to a review of any agency action which is by law committed to agency discretion.

Courts are not to set aside agency findings unless they are found to be "arbitrary, capricious, or otherwise not in accordance with law," or "unsupported by substantial evidence."

Due account is to be taken of the rule of "prejudicial error."

The section thus enacts in statutory form those aspects of existing law which are generally recognized as most sound and practical in their application.

These are days of upheaval, change, and overturn, in the methods and procedures that were adopted in the years of war.

We lump it all under the head of reconversion.

It is a nice word, but it does not imply the bad faith and the grudges, the bad blood and the hostilities which we see everywhere.

But we will have to get over some of our childishness if we wish to be successful in bringing prosperity under peace to this land of ours.

The time has come for business, in its two great subdivisions of labor and management, to cooperate with Government.

We need the sort of three-horse hitch that we had during the war, to get the wagon moving.

Labor is big business in our national life, as well as management, and it must be considered as such.

Business including labor in this day of our development has far more responsibility than just making money for its own members.

It had a national responsibility to the public during the war and it has the same responsibility in the peace.

We are bickering and squabbling like back-fence cats, where if we get into production the present problems of wages and prices will tend to settle themselves.

How foolish we are to try to settle decimal points when we have not given the forces of production and competition a free play, and before the inexorable laws of supply and demand can be applied.

Let's jump off the merry-go-round and into production.

The task of business, including labor, is to create the highest possible levels of employment and productive activity.

A primary task of the Government is to assist in this process.

It must at the same time alleviate and correct impediments to the development of our economy.

The Government must, in the interest of society as a whole, regulate where regulation is required.

It must assist where assistance is needed.

But it is my firm belief that these necessary processes of business and the Government can be conducted on a plane of mutual understanding.

We lawyers have an unusual opportunity in this field.

During the war 40,000 lawyers donned the uniform so that the democratic processes might survive.

Now, greater than ever, is the need for this honored profession to make added efforts to bring about adequate cooperation in the national recovery.

Too often do we consider ourselves members of the wrecking crew rather than the construction gang.

Let's build rather than tear down.

The lawyer is, in countless situations, the intermediary between business and administrative agencies.

By his understanding of the problems of Government, as well as those of business, he can be of invaluable aid to both, and to our society as a whole.

The McCarran-Sumners bill in its present form seems to me to be a real contribution toward achieving this solid basis of cooperation.

If it is adopted it will be an earnest on the part of the Federal Government that it is willing to require of all Government agencies

the highest standard of conduct, with full publicity and full opportunity for judicial review of administrative action.

The bill will offer to the public and to the legal profession statutory assurance that these standards must be strictly observed.

The legal profession will have the heavy responsibility of seeing to it that the provisions of the bill are used as a means of bringing about the more effective and just carrying out of governmental business, rather than as a means of hampering or delaying that business.

The courts will have a similar responsibility.

I have no doubt that they will use their powers wisely.

The Supreme Court has reminded us that "Although the administrative process has had a different development and pursues somewhat different ways from those of courts," administrative agencies and courts "are to be deemed collaborative instrumentalities of justice, and the appropriate independence of each should be respected by the other."

In this spirit, we may look forward to the establishment of a firm basis of cooperation and understanding.

REORGANIZATION OF CONGRESS—STATEMENT BY BEARDSLEY RUMML

Mr. MURRAY. Mr. President, in connection with the proposed reorganization of the Congress, it will be interesting to note the advice recently given by Mr. Beardsley Rumml, a distinguished representative of the business world, on the subject of strengthening our democracy. If competent men are to be attracted to public life consideration must be given to the views expressed by this able student of our American system.

I ask that his views, which were broadcast Sunday, March 3, 1946, on the National Broadcasting Co.'s National Hour, be printed in the Record in connection with these remarks.

There being no objection, the statement was ordered to be printed in the Record, as follows:

Strengthening our Congress is one of the big jobs that has to be done to strengthen democracy at home and to make democracy the foundation for a peaceful world. Democracy must be made to work better, and to make democracy work better our Congress must be strengthened so that it can meet the requirements of modern conditions with modern methods. Much study has been given to the problem both in and out of Congress, but the time has now come to act. Strengthening the Congress is one of our number one reconversion jobs.

Many detailed suggestions have been made. I shall mention only two. First, there should be majority and minority policy committees that would make party responsibility a reality. Without party responsibility there can be no democracy that truly functions. Second, congressional salaries should be raised, not by the inadequate amounts that are being discussed, but to \$25,000 the minimum compensation that should be paid for the top legislative job in the world's top democracy. This \$25,000 rate was unanimously recommended by the agriculture, labor, and business committees of the National Planning Association after study and report by Robert Heller, the distinguished Cleveland management engineer. Study of the facts makes the \$25,000 rate inescapable if we are to treat our Congressman justly and if we are to be just to our democratic legislative process. If it is politically awkward for Congressmen to raise their own salaries we of the National Planning Association say, "Let the question be referred to the Supreme Court for an impartial recom-

mendation." But let us not permit political fear and delicacy to saddle a substandard rate on our congressional representatives.

Unless the full correction of the present unjust situation is made at this time we are likely to go on with half-way salaries indefinitely. In the long run this will be bad for Congress and an obstacle to the strengthening of our democracy.

PRESIDENT HOOVER AND THE FAMINE SITUATION

Mr. SMITH. Mr. President, in connection with the famine situation in Europe, I call attention to the text of a day letter telegram sent from Florida on February 26 by former President Hoover to Secretary of Agriculture Anderson, accepting the invitation of the Secretary that Mr. Hoover participate in the setting up of the famine committee to take care of the desperate need in Europe and other parts of the world.

It is a great gratification to those of us who were associated with Mr. Hoover in the Food Administration in World War I and the relief operations during that war and afterward that Mr. Hoover has been invited by the President of the United States and the Secretary of Agriculture to participate in this important work. This is definitely an American project over and above any possible partisan consideration, and to me it is very inspiring that President Truman should have invited his only living predecessor to undertake this important task. During World War I, as we all know, Mr. Hoover headed up the magnificent work that was done in the administration of our food problems, and in organizing, after the war, the great relief undertakings that were one of the outstanding contributions of our country toward relieving the suffering of people throughout the world.

I call special attention to the fact that in Mr. Hoover's day letter telegram to Secretary Anderson, based on the wealth of his experience in matters of food relief, our former President urgently recommends that all food questions, whether of production, rationing, distribution, or price control, should be centered in the hands of one food administrator, in this instance, Mr. Anderson, Secretary of Agriculture, and in connection with this over-all recommendation, he recommends specifically that, so far as price controls of foodstuffs are concerned, the authority should be transferred immediately from the OPA to the Secretary of Agriculture. This, in my judgment, Mr. President, would relieve one of the difficult problems which are facing us in handling this famine situation, and would short cut the whole process of speeding food to Europe in this time of dire emergency.

In his telegram Mr. Hoover also suggests that the cooperation of the American people in this important humanitarian endeavor should be put upon a voluntary basis, as was so successfully done in World War I. In his telegram Mr. Hoover also points out that in his judgment the food program can be handled by the present Government agencies without adding to existing personnel and without requiring the setting up of a separate organization.

The short, concise recommendations contained in this telegram give such a clear-cut picture of how this desperate famine situation should be handled that I feel it is well worthy of the study of all of us who are so deeply concerned that this acute distress should be relieved by American cooperation as ex-which I have referred is as follows:

Mr. Hoover's day letter telegram to which I have referred is as follows:

CRAIG, FLA., February 26, 1946.

HON. CLINTON ANDERSON,
Secretary of Agriculture,
Department of Agriculture,
Washington, D. C.:

I have your message, and I would like to be of help in any question of starving peoples.

I recently issued a statement supporting President Truman's call for conservation of food on the assumption that desperate need had been established.

On thinking the matter over I do not believe the suggested general committee organization outside of the Government, though helpful, would cover the whole emergency. I recommended to the President last May that all control of food, scattered over different Government agencies, should be lodged in you as Food Administrator, because that office is inseparable from the Secretaryship of Agriculture. I am advised that this was not done. It should be done now. In any event only an official of Cabinet rank and an existing organization can create and direct the quick campaign that is needed now because shipments from the United States after the end of June will be of no avail in this famine and it is already very late to start.

In order that there be no delay in giving you the advice you request, I suggest steps in voluntary organization as follows:

The first step is for you as Food Administrator to be given complete authority over elimination of waste and unnecessary consumption, hoarding, substitution of foods, and control of exports and imports.

The second step in order to gear your organization is to determine:

- (a) World need.
- (b) World surpluses.
- (c) Possible American surpluses.
- (d) What kind of food in all cases.
- (e) How much of each kind of food you can and should export from the United States without injury to public health.

I cannot adequately advise on this phase as it would require exhaustive investigations at home and abroad, and I assume you already have such information.

The third step is to constitute the State directors of the Department of Agriculture as State food administrators, and the county agents as county food administrators.

The fourth step is for you to ask each of the food trade associations, such as hotels, restaurants, bakers, packers, millers, etc., to appoint emergency famine committees under some respected leader, they, together with the experts of the Department of Agriculture, to work out ways and methods of voluntary action in each of their trades to save waste, unnecessary use, to devise substitutes, and to secure the adherence of the members of the trades to this voluntary program.

The fifth step is to prepare a simple program for housewives which will eliminate waste, save unnecessary consumption and make use of substitutes. This should be a voluntary program. Your State and county food administrators should organize the women in their localities and see that food trades are fully organized also.

All this can be done by the present Government agencies without adding to personnel and does not require the setting up of separate organization. It seems to me that if

the situation is urgent, as I believe it is, then this is the only course to pursue in order to get quick and effective results.

HERBERT HOOVER.

GIVE FARMERS A BREAK—STATEMENT BY SENATOR THOMAS OF OKLAHOMA

Mr. THOMAS of Oklahoma. Mr. President, I have just released to the press a statement entitled "Give Farmers a Break." I ask permission to have the statement printed in the RECORD at this point in connection with my remarks.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

Today's papers contain news stories to the effect that the Office of Price Administration will adopt a tough price policy with respect to farm products generally.

The OPA, working in conjunction with the Commodity Exchange Administration, is undertaking, so the papers state, to have the various commodity exchanges increase their margin requirements on cotton to the amount of \$50 per bale, or \$5,000 per contract of 100 bales.

It is the obvious purpose of this move to force the price of cotton down. Even the suggestion of this unprecedented act caused the price of cotton to fall over \$5 per bale, thus causing a loss to the owners of the 11,000,000 bales of cotton in the United States of some \$55,000,000.

The same tough policy proposed to be put in force against cotton has had a similar effect upon the price of stocks listed on the various exchanges of the country.

Commentators, in analyzing the effects of radio statements by responsible officials, state that such policy caused a slump in the value of stocks of some \$4,500,000,000.

Those favoring a tough policy with respect to prices of industrial and farm commodities must favor a system wherein one man, or a small group of men, may, by making a single radio speech or using their official position, try to control prices either by discretionary power or through bluffs raise or lower prices at will.

Farmers are the only group in America that have not had a break during the war period. Wage earners have had their income increased in some instances by more than 300 percent. Industry has made such profits as to force the Congress to provide a system of renegotiation in order to keep such profits at a reasonable level.

Farmers, during the long years of the depression, were forced to produce the food necessary to feed our people at bankrupt prices. Cotton sold for less than 5 cents per pound, wheat sold for less than 20 cents per bushel, corn sold for less than 15 cents per bushel, and livestock sold for less than 3 cents per pound.

Since all other groups have profited during the war period, it would seem not unjust that farmers should have a chance to recoup at least a portion of their losses sustained during the depression years.

Today, with farm prices scarcely up to parity, the responsible officials are taking steps to beat down existing prices and to the extent that they are successful farmers will be injured.

Recently the same officials have consented to a general increase in industrial wages of some 18½ cents per hour, while they must, or should, know that the cotton farmer receives for his hourly labor only the amount of the price of a pound of raw cotton, which on the spot market is less than 25 cents per pound.

This means that with cotton selling for 25 cents per pound, the cotton farmer receives 25 cents per hour for his labor in planting, chopping, picking, and marketing the product.

OFFICE OF BUDGET AND FINANCE
Legislative Reports and Service Section

79th-2nd, No. 43

DIGEST OF PROCEEDINGS OF CONGRESS OF INTEREST TO THE DEPARTMENT OF AGRICULTURE
(Issued March 13, 1946, for actions of Tuesday, March 12, 1946)

(For staff of the Department only)

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HIGHLIGHTS: Senate passed administrative procedure bill. Senate received President's recommendation on wool prices and marketing. House rejected resolution for consideration of bill for retirement of Members of Congress and executive agency heads. House received conference report on first urgent deficiency appropriation bill.

SENATE

1. ADMINISTRATIVE PROCEDURE. Passed as reported, S. 7, prescribing fair administrative procedure (pp. 2189-2208). The bill requires, with some exceptions, executive agencies to publish in the Federal Register organization descriptions, names of places of business, policy statements, certain orders, opinions, statements of rule-making procedures, notices of proposed rules, and rules; directs that other informational materials be made available; sets up procedural requirements for rule making and adjudication, including provision for hearings; sets up limitations on administrative powers; prohibits imposition of unauthorized sanctions and, except in cases of willfulness or those in which public health, interest, or safety require otherwise, provides that no withdrawal, suspension, revocation, or annulment of any license shall be lawful unless opportunity for compliance has been given prior to action; permits continuation of licensed activities until renewal application has been acted upon by the concerned agency; restates principles of judicial review of administrative action; and authorizes appointment of examiners by and for agencies, and contains certain provisions relating to their compensation and removal.
2. WOOL PRICES AND MARKETING. Received from the President his recommendations for CCC purchases to support wool on an equality with other agricultural commodities, that the purchase price shall not be revised while sheep numbers are declining, that CCC continue to sell wool at prices competitive with imported foreign wool and that the Marketing Agreements Act be made applicable to wool (pp. 2211-13).

3. SURPLUS PROPERTY. The Military Affairs Committee reported with amendment S. 1636, to amend the Surplus Property Act of 1944, to designate the Department of State as the disposal agency for surplus property outside the continental U. S., its Territories, and possessions (p. 2182).
4. ST. LAWRENCE WATERWAY. Sen. Aiken, Vt., inserted Julius H. Barnes' (Pres. Natl. St. Lawrence Assn.) testimony before the S. Foreign Relations Committee favoring this project (pp. 2183-7).
5. HOUSING. Sen. Mead, N.Y., urged support of the Wyatt housing plan to remedy the critical housing shortage (pp. 2187-9).
6. ADJOURNED until Thurs. Mar. 14.

HOUSE

7. FIRST URGENT DEFICIENCY APPROPRIATION BILL. Received the conference report on this bill, H.R. 5458 (H.Rept. 1699) (p. 2239). The \$100,000,000 loan authorization for REA is not in disagreement.
8. RETIREMENT. Rejected, 116-217, a resolution for the consideration of H.R. 4199, to extend the existing contributory system of retirement benefits to Members of Congress and heads of executive departments (pp. 2229-36).
9. RECONVERSION. Rep. Sikes, Fla., pointed out the problems of reconversion, comparing present conditions with those of the period immediately following World War I (pp. 2237-8).
10. PRICE CONTROL. Received a Lawrenceville, Pa. citizens' petition opposing the continuance of OPA (p. 2240).
11. WAR POWERS ACT. The Rules Committee reported a resolution for the consideration of H.R. 5716, to repeal Title XI, Acceptance of Conditional Gifts, of the Second War Powers Act, 1942; to terminate March 31, 1947 Titles I, Emergency Powers of the Interstate Commerce Commission, II, Acquisition and Disposition of Property, IV, Purchase by Federal Reserve Banks of Government Obligations, V, Waiver of Navigation and Inspection Laws, VII, Political Activity, and XIV, Utilization of Vital War Information; and to terminate June 30, 1947 Title III, Priorities Powers (pp. 2237, 2239).

BILLS INTRODUCED

12. EDUCATION. S. 1920, by Sen. Hill, Ala., and H. R. 5742, by Rep. Douglas, Ill., to provide for the demonstration of public library service in areas without such service or with inadequate library facilities. To S. Education and Labor Committee and House Education Committee. (pp. 2182, 2239.) Remarks of authors (pp. 2182, 2221-2).
H. R. 5743, by Rep. Gwinn, N. Y., in relation to the U. S. Office of Education. To Education Committee. (p. 2239.) Remarks of author (p. A1380).
13. FISHERIES. H. R. 5749, by Del. Pinero, P. R., to provide for the investigation and conservation of the fishery resources and the development of the fishing industry of the island possessions of the U. S. and of adjacent waters of the Caribbean Sea and the Atlantic Ocean. To Merchant Marine and Fisheries Committee. (p. 2240.)

also attack the basic deficiencies in our housing structure, the Wyatt program also embraces the far-reaching provisions of the Wagner-Ellender-Taft bill, which I understand will shortly be reported from the Committee on Banking and Currency.

The emergency housing legislation now before the Senate and the Wagner-Ellender-Taft bill deserve full support. We should take quick action to provide the essential legislative authority to attack the veterans' housing emergency and to pave the way toward long-range building aimed at decent homes for all American citizens.

Of course, Mr. President, we are not limited in our legislative efforts by the Wyatt program. We can extend and improve upon that program. But we must pursue our efforts with vigor and promptness, or we will deny our veterans the simple justice they richly deserve. We rose to great heights in time of war in the productive enterprise of our democracy. We must meet this problem with the same determination and vigor and success with which we met the problems of production during the war.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Maurer, one of its reading clerks, announced that the House insisted upon its amendments to the bill (S. 63) to amend the Communications Act of 1934, as amended, so as to prohibit interference with the broadcasting of noncommercial cultural or education programs, disagreed to by the Senate; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. LEA, Mr. BULWINKLE, Mr. HARRIS, Mr. REECE of Tennessee, and Mr. BROWN of Ohio were appointed managers on the part of the House at the conference.

The message also announced that the House insisted upon its amendments to the bill (S. 1354) to authorize the permanent appointment in the grades of general of the Army, fleet admiral of the United States Navy, and general in the Marine Corps, respectively, of certain individuals who have served in such grades during the Second World War, disagreed to by the Senate; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. MAY, Mr. THOMASON, Mr. BROOKS, Mr. ANDREWS of New York, and Mr. SHORT were appointed managers on the part of the House at the conference.

The message further announced that the House had passed a joint resolution (H. J. Res. 307) to authorize the use of naval vessels to determine the effect of atomic weapons upon such vessels, in which it requested the concurrence of the Senate.

ENROLLED BILLS SIGNED

The message also announced that the Speaker had affixed his signature to the following enrolled bills, and they were signed by the President pro tempore:

H. R. 1613. An act for the relief of Christopher Dance;

H. R. 1615. An act for the relief of the legal guardians of John Buchan and Lawrence Gillingham, minors;

H. R. 1854. An act for the relief of Thomas Sumner;

H. R. 1890. An act for the relief of the estate of Peter G. Fabian, deceased;

H. R. 2335. An act for the relief of Albert E. Severns;

H. R. 2487. An act for the relief of Mrs. S. P. Burton;

H. R. 3791. An act for the relief of Mrs. Florence Mersman; and

H. R. 4884. An act to relieve certain employees of the Veterans' Administration from financial liability for certain overpayments and allow such credit therefor as is necessary in the accounts of Guy F. Allen, chief disbursing officer.

HOUSE BILL AND JOINT RESOLUTION REFERRED

The following bill and joint resolution were each read twice by their titles and referred, as indicated:

H. R. 5805. An act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1947, and for other purposes; to the Committee on Appropriations.

H. J. Res. 307. Joint resolution to authorize the use of naval vessels to determine the effect of atomic weapons upon such vessels; to the Committee on Naval Affairs.

ADMINISTRATIVE PROCEDURE ACT

The Senate resumed the consideration of the bill (S. 7) to improve the administration of justice by prescribing fair administrative procedure.

Mr. McCARRAN. Mr. President, the unfinished business before the Senate is S. 7, the administrative procedure bill, which has been so long considered and studied by this body. In order that the Senate may have a preview of what it shall consider in connection with the bill, I send to the desk a very able article by Mr. Willis Smith, president of the American Bar Association, entitled "Drafting the Proposed Federal Administrative Procedure Act," and I ask that the clerk may read the article, because it is brief, and will lend emphasis to the explanation which I shall make of the bill immediately.

The PRESIDING OFFICER (Mr. TUNNELL in the chair). Without objection, the clerk will read as requested.

The Chief Clerk read as follows:

DRAFTING THE PROPOSED FEDERAL ADMINISTRATIVE PROCEDURE ACT

(By Willis Smith¹)

"How to assure public information, how to provide for rule making where no formal hearing is provided, how to assure fairness in adjudications, how to confer various incidental procedural rights, how to limit sanctions, how to state all the essentials of a right to judicial review, and how to make examiners independent—these were the main questions."

During the last 3 months of 1945 there took place a remarkable series of events in connection with the proposed statute regulating Federal administrative procedure and conferring powers of court review. On October 19, 1945, the Attorney General of the United States issued a strong statement in support of it. On the following November 19 the Committee on the Judiciary of the United States Senate unanimously and favorably reported it (S. 7, Rept. No. 752). On December 10 it was introduced in the House of Representatives as H. R. 4941 in the form

¹The author is a member of the Raleigh (N. C.) bar and president of the American Bar Association.

reported by the Senate committee. On December 18 and 19, at the sixty-eighth annual meeting of the American Bar Association, Chairman HATTON W. SUMNERS, of the Committee on the Judiciary of the House of Representatives made a favorable statement on it, Attorney General Tom C. Clark gave a full address on the subject, and resolutions in favor of it were adopted.

In these days, when so much legislation is done piecemeal and the demands of special interests hold the center of the stage, the legislative proposal which has met with such general acceptance is even more notable because it deals broadly with the problem of administration and is a measure for good government. It deals with procedure, not privileges, and provides a general method of assuring that government will operate according to law. A bill of that character in these days required a background of preparation to achieve such acceptance.

The proposed statute involves almost all administrative operations. It deals with the very important problem of the relation of courts to administrative agencies. It is obviously not such a statute as may easily be drawn and simply submitted to the usual legislative routine. The method of procedure adopted by the Senate Judiciary Committee, under the chairmanship of Senator PAT McCARRAN, of Nevada, recognized the nature of the task. That method is not only important for this bill but opens possibilities for the future.

LEGISLATIVE HISTORY

For more than 10 years Congress has considered proposals for general statutes respecting administrative law and procedure. Ten or more important bills have been introduced in Congress, and most of them have received widespread consideration.

In 1937 the President's Committee on Administrative Management recommended the complete separation of investigative-prosecuting functions and personnel from deciding functions and personnel in administrative agencies, but the significance of its report was lost in the turmoil of other issues. In 1938 the Senate Committee on the Judiciary held hearings on a proposal for the creation of an administrative court. In 1939 the Walter-Logan administrative procedure bill was favorably reported to the Senate. In 1940 it was passed by the Congress but vetoed by the President in part on the ground that action should await the then imminent final report by a committee, appointed in the executive branch. Early in 1941 that committee, popularly known as the Attorney General's Committee on Administrative Procedure, made its extensive report.

Growing out of the work of the Attorney General's Committee on Administrative Procedure, several bills were introduced in 1941. Senate hearings were held on these bills during April, May, June, and July of that year. All interested administrative agencies were heard at length and the proposals then pending involved the basic issues.

Further consideration was postponed for three war years. Bills were again introduced in June 1944 and reintroduced with revisions in 1945. The Committee on the Judiciary of the House of Representatives held hearings in June 1945, but it seemed clear that the real problems were detailed and technical. It had come to be widely accepted that such legislation should be functional in the sense that it should apply to kinds of operations rather than to forms of agencies. Accordingly, the proposed statute dealt primarily with the legislative and judicial functions of administrative agencies. Within each of those functions, however, it was necessary to define procedures and except subjects which were either not regulatory in character or were soundly committed to Executive discretion.

TECHNICAL REVISIONS

Anticipating that this would be the situation, the chairmen of the Judiciary Committees of the Senate and House of Representatives had requested administrative agencies to submit their views and suggestions in writing. The Attorney General was requested to act as a liaison officer between the legislative committee and the several administrative agencies. Representatives of the staff of the Senate committee, with the aid of the representatives of the Attorney General and other interested parties, engaged in an extensive series of conferences at which points made were discussed and alternative proposals as to language were debated. Then, in May 1945, the Senate committee issued a committee print in which the text of S. 7 appeared in one column and a tentatively revised text in the parallel column.

The revised text so proposed was then again submitted to administrative agencies and other interested parties for their written or oral comments, which were analyzed by the committee's staff and a further committee print was issued in June 1945. In four parallel columns it set forth (1) the text of the bill as introduced, (2) the text of the tentatively revised bill previously published, (3) a general explanation of provisions with references to the report of the Attorney General's Committee on Administrative Procedure and other authorities, and (4) a summary of views and suggestions received.

About this time Tom C. Clark became Attorney General and added new representatives to the conference group. Senator McCARRAN, chairman of the Senate Committee on the Judiciary, asked that they screen and correlate any further agency views. After this had been done and representatives of private organizations had submitted their additional views, the bill as further revised was made a committee print under date of October 5, 1945.

This final draft was submitted to the Attorney General for his formal perusal. He not only reported that the proposal was not objectionable but recommended its enactment in a strong statement on October 19, 1945. A month later the Senate committee reported the measure. Its report of 31 pages plus appendix reflects the long and painstaking consideration given the bill. The process of that consideration was not only well adapted to the technical nature of the job at hand but it was truly democratic, for private as well as governmental representatives were given every opportunity to submit their views and suggestions.

PARTICIPATION OF LEGAL PROFESSION

The organized bar had the same opportunities for presentation of views and suggestions. Bar associations had adopted resolutions and had presented reports to the congressional committees. The American Bar Association's special committee on administrative law took an active part, culminating in a full day's meeting of the 13-man committee at Washington on October 2. The committee unanimously approved the final draft of the bill and certified its position to the chairmen of the congressional committees.

Contrary to the impression which some people seem to have, the proposed Administrative Procedure Act is not a compromise. The problem was not "how much" but "how." How to assure public information, how to provide for rule making where no formal hearing is provided, how to assure fairness in adjudications, how to confer various incidental procedural rights, how to limit sanctions, how to state all the essentials of a right to judicial review, and how to make

examiners independent—these were the main questions.

There were two reasons why the legal profession could not engage in trading for advantage in the details. First, if the statute should prove unworkable, it might prejudice procedural legislation for all time. Secondly, onerous requirements, such as those respecting evidence, might aid one private interest in one case—that is, where prohibitory orders are issued—but would harm them in another—e. g., where a license is sought. Mainly, however, it was a simple matter of good citizenship and good statesmanship to seek the best and fairest provisions for each subject.

CONCLUSION

The draft of bill as reported by the Senate Committee on the Judiciary offers a means of securing and maintaining a government according to law. Its workability has been tested by the elaborate procedure discussed above. Its utility has been approved by the representatives of most of the legal profession. Its desirability is admitted by public officers of the highest rank. The necessity for it has been attested by the responsible Members of the National Legislature. If it is adopted, as it should speedily be, the result will be due to the background of study and care with which its terms have been drafted and tested.

Mr. McCARRAN. Mr. President, it has been said that the law is a jealous mistress. I regret exceedingly that I cannot have before me at this moment every Member of the Senate of the United States so that each might listen to the explanation of a bill which to my mind and to the mind of the bar of America is one of the most important measures that has been presented to the Congress of the United States in its history.

We have set up a fourth order in the tripartite plan of Government which was initiated by the founding fathers of our democracy. They set up the executive, the legislative, and the judicial branches; but since that time we have set up a fourth dimension, if I may so term it, which is now popularly known as administrative in nature. So we have the legislative, the executive, the judicial, and the administrative.

Perhaps there are reasons for that arrangement. We found that the legislative branch, although it might enact law, could not very well administer it. So the legislative branch enunciated the legal precepts and ordained that commissions or groups should be established by the executive branch with power to promulgate rules and regulations. These rules and regulations are the very things that impinge upon, curb, or permit the citizen who is touched by the law, as every citizen of this democracy is.

The bill comes from the Committee on the Judiciary of the Senate of the United States, and I think it should be explained to every Member of the Senate, because the Committee on the Judiciary desires that there should be a full understanding of its provisions and purposes. The Committee on the Judiciary is the law committee of this body, and the law is the thing which makes democracy vital. This is not a Government of men. It is a Government of law; and this law is a

thing which, every day from its enactment until the end of time so far as this Government is concerned, will touch every citizen of the Republic. So I proceed with a detailed explanation of a bill which should be listened to by every Member of the Senate.

Mr. President, Calendar No. 753, Senate bill 7, the purpose of which is to improve the administration of justice by prescribing fair administrative procedure, is a bill of rights for the hundreds of thousands of Americans whose affairs are controlled or regulated in one way or another by agencies of the Federal Government. It is designed to provide guaranties of due process in administrative procedure.

The demand for legislation of this type to settle and regulate the field of Federal administrative law and procedure has been widespread and consistent over a period of many years. Today there are no clearly recognized legal guides for either the public or the administrative officials of Government departments. The subject of administrative law and procedure is not expressly mentioned in the Constitution, and there is no recognizable body of such law, as there is for the courts in the Judicial Code.

Even the ordinary operations of administrative agencies are often difficult to know, and undoubtedly there have been litigants before Government agencies who have received less than justice because they were not fully advised of their rights or of the procedure necessary to protect them.

The Committee on the Judiciary has been convinced that there should be a simple and standardized plan of administrative procedure. This bill is intended to put such a plan into effect.

Proposals for general statutes respecting administrative law and procedure have been before the Congress in one form or another, and have been considered by the Congress over a period of more than 10 years. I call the attention of the Senate to the chart on page 2 of the Judiciary Committee's report on Calendar No. 753, Senate bill 7. This is Senate Report No. 752, which is on the desks of all Senators. This chart clearly shows the chronology of the main bills on this subject which have been introduced. Each of the bills shown on this chart has received wide public attention and long and serious consideration in the Congress. Problems of administrative law and procedure have been increased and aggravated by the continued growth of the Government, particularly in the executive branch. By the middle of the 1930's the situation had become so serious that the President then in office appointed a committee to make a comprehensive survey of administrative methods, overlapping functions, and diverse organizations, and to submit suggestions for improvement. While that committee was not primarily concerned with the more detailed questions of administrative law and procedure as the term is now understood, the committee inevitably was brought face to face with the

fundamental problem of the inconsistent union of prosecuting and deciding functions exercised by many executive agencies.

In 1937 the President's Committee on Administrative Management issued its report. I quote excerpts from that report:

The executive branch of the Government of the United States has * * * grown up without plan or design * * *. To look at it now, no one would ever recognize the structure which the founding fathers erected a century and a half ago. * * *. Commissions have been the result of legislative groping rather than the pursuit of a consistent policy. * * *. They are in reality miniature independent governments set up to deal with the railroad problem, the banking problem, or the radio problem. They constitute a headless "fourth branch" of the Government, a haphazard deposit of irresponsible agencies and uncoordinated powers. * * *. There is a conflict of principle involved in their make-up and functions. * * *. They are vested with duties of administration * * * and at the same time they are given important judicial work. * * *. The evils resulting from this confusion of principles are insidious and far-reaching. * * *. Pressures and influences properly enough directed toward officers responsible for formulating and administering policy constitute an unwholesome atmosphere in which to adjudicate private rights. But the mixed duties of the commissions render escape from these subversive influences impossible. Furthermore, the same men are obliged to serve both as prosecutors and as judges. This not only undermines judicial fairness; it weakens public confidence in that fairness. Commission decisions affecting private rights and conduct lie under the suspicion of being rationalizations of the preliminary findings which the Commission, in the role of prosecutor, presented to itself.

Mr. President, I have been quoting from the report of the President's Committee on Administrative Management, issued in 1937. In transmitting that report to the Congress, President Roosevelt added a comment of his own, from which I also wish to quote. He said:

I have examined this report carefully and thoughtfully, and am convinced that it is a great document of permanent importance. * * *. The practice of creating independent regulatory commissions, who perform administrative work in addition to judicial work, threatens to develop a "fourth branch" of the Government for which there is no sanction in the Constitution.

Mr. President, those are the words of the late, beloved President of the United States, Franklin Delano Roosevelt.

The remedy proposed by that committee, back in 1937, was a very drastic one, namely, complete separation of investigative and prosecuting functions and personnel from deciding functions and personnel. That remedy had inherent administrative difficulties which, while not so great as the fault which it sought to remedy, were in themselves serious. The pending bill does not go as far as that 1937 recommendation.

A proposal for creation of an administrative court came before the Senate Judiciary Committee in 1938, and extensive hearings were held. In connection with those hearings, the Judiciary Committee issued a committee print elaborately analyzing the administrative powers conferred by statute. That was in

the third session of the Seventy-fifth Congress. In the following year, 1939, the Walter-Logan administrative procedure bill was favorably reported to the Senate from the Committee on the Judiciary. That was during the Seventy-sixth Congress, first session, and the report I have mentioned was Senate Report 422 of that Congress, reporting on Senate bill 915 of that Congress. In the third session of the Seventy-sixth Congress, the Walter-Logan bill was reported to the House of Representatives with amendments. The bill eventually was passed by the Congress, but was vetoed by the President in 1940, partly on the ground that action should await the final report of a committee which had been appointed 2 years earlier to study the entire situation.

The committee which the President had in mind was the so-called Attorney General's committee, which had been appointed in December 1938. The background of that committee was a renewed suggestion from the Attorney General concerning the need for procedural reform in the wide and growing field of administrative law. The President had concurred in the Attorney General's recommendation for the appointment of a commission to make a thorough survey of existing practices and procedures, and to point the way to improvements, and had authorized the Attorney General to appoint a committee for that purpose. The committee was composed of Government officials, teachers, judges, and private practitioners.

The Attorney General's committee made an interim report in January 1940. The staff of that committee prepared, and during 1940 and 1941 issued, a series of studies of the procedures of the principal administrative agencies and bureaus in the Federal Government. Executive sessions of the committee were held over a long period, and representatives of Federal agencies were heard at such sessions. The committee also held lengthy public hearings. It then prepared and issued a final report which was exhaustive and voluminous. The Senate should be informed that the Judiciary Committee, in framing the bill which is now before the Senate, has had the benefit of the factual studies and analyses prepared by the Attorney General's committee.

Several bills were introduced in 1941, as the outgrowth of the work of the Attorney General's committee. Hearings on these bills were held during the spring and early summer of that year. The matter was postponed, however, because of the international situation then existing, and the apparent need for concentrating on matters of national defense and, soon afterward, of actual war. However, all interested administrative agencies were heard at length during the 1941 hearings, and the proposals then pending involved the same basic issues as does the present bill.

On the basis of the studies and hearings in connection with prior bills on the subject, and after several years of consultation with interested parties in and out of official positions, identical bills on this subject were introduced in June 1944, Senate bill 2030 of the Seventy-eighth

Congress in the Senate, and House bill 5081 in the House. Introduction of these bills brought forth a large volume of further suggestions from every quarter. As a result, a revised and simplified bill was introduced at the opening of the present Congress, on January 6, 1945. This bill was Senate bill 7, introduced in the Senate by the chairman of the Judiciary Committee of the Senate; and an identical measure, House bill 1203, was introduced on January 8 in the House of Representatives by the chairman of the Judiciary Committee of that body.

A great deal of informal discussion with interested parties followed the introduction of these two bills. In the latter part of June 1945 the Judiciary Committee of the House held hearings on the House bill. Prior to those hearings the House committee and the Senate Committee on the Judiciary had requested administrative agencies to submit their views in writing. All submissions were carefully analyzed and, with the aid of representatives of the Attorney General and interested private organizations, in May 1945 there was issued a Senate committee print setting forth in parallel columns the bill as introduced and a tentatively revised text.

Once more interested parties in and out of Government were invited to submit, and did submit, comments orally or in writing on the revised text. These were analyzed by the staff of the Senate Committee on the Judiciary, and a further committee print was issued in June 1945. This committee print set forth, in four parallel columns, first, the text of the bill as introduced; second, the text of the tentatively revised bill previously published; third, a general explanation of provisions with reference to the report of the Attorney General's committee on administrative procedure and other authorities; and, fourth, a summary of views and suggestions received.

After the preparation and publication of this committee print, the Attorney General again designated representatives to hold further discussions with interested agencies and to screen and further correlate agency views, some of which were submitted in writing and some orally. Private persons and representatives of private organizations also participated in the discussions at that time.

After completion of those discussions the committee drafted the bill in the form in which it has been reported and is now before the Senate. The Attorney General has reported favorably on this bill, and I call the attention of the Senate to the text of the Attorney General's report, which appears as Appendix B of the committee's report.

Mr. President, I have gone rather fully into the background of this bill and the various steps which were taken prior to its presentation to the Senate, because I wish every Member of this body to know and realize that not only the general subject, but every detailed provision of the bill, has had the most careful consideration possible. The bill has the approval of the Judiciary Committee of the Senate. It has the active support of the Attorney General. Not one agency in the executive branch of the Government is on record as opposing it.

The American Bar Association has endorsed it wholeheartedly. The bill has, in short, the kind of virtually unanimous support which would be expected in the case of a bill which has received such very lengthy, and very full, and meticulous consideration.

It has been the purpose of the Committee on the Judiciary, throughout the lengthy process of consideration which I have outlined, to make sure that no operation of the Government would be unduly restricted by the bill. The committee has also taken the position that the bill must repeatedly protect private parties even at the risk of some incidental or possible inconvenience to, or change in, present administrative operations. The committee is convinced, however, that no administrative function is improperly affected by this bill.

Admittedly, this is a complicated bill, but it deals with a complicated subject. I wish to say—and I take no credit for it—that this bill represents one of the finest pieces of legislative draftsmanship in my experience. That is the natural result of the lengthy process of writing and rewriting, involving careful attention to every detail, and to every nicety of expression, which I have already outlined to the Senate.

Perhaps it might be well at this time to emphasize that this bill is a coherent whole; no section or paragraph of the bill is completely independent; all parts of it are closely interrelated. The bill must be read and considered as a whole, and in this case the whole is considerably more than the sum of its parts.

Mr. President, without attempting to minimize the many problems with which the committee dealt, I want to point out to the Senate the four principal problems which had to be solved. These were, first, to distinguish between different types of administrative operations; second, to frame general requirements applicable to each such type of operation; third, to set forth those requirements in clear and simple terms; fourth, to make sure that the bill was complete enough to cover the whole field.

As it has been reported to the Senate, the committee feels that it has avoided the mistake of attempting to oversimplify this measure. It has not hesitated, therefore, to state functional classifications and exceptions where those could be rested upon firm grounds. In so doing, the committee has followed the undeviating policy of dealing with types of functions as such and in no case dealing with administrative agencies by name. That point is important, and I will repeat it if I may. The committee has not deviated from the policy of dealing with types of functions as such, and the bill in no case deals with administrative agencies by name.

For example, certain war and defense functions are exempted under the bill, but there is no exemption of the War or Navy Department in the performance of their other functions. Obviously it would be folly for the committee to presume to distinguish between "good" agencies and "bad" agencies, and there is no attempt in the bill to make such a distinction.

To cite another example, the legitimate needs of the Interstate Commerce Commission have been fully considered, but the Commission has not been placed in a favored position over other Government agencies by exemption from the bill. To state the matter another way, the committee feels that administrative operations should be treated as a whole, lest the neglect of some link should defeat the purposes of the bill. In this connection, I wish to call the attention of Senators to the chart on page 9 of the committee's report, which emphasizes the committee's approach, by showing, in diagram form, how the principal sections of the bill are interrelated.

I think it will be well at this point to give the Senate a brief comparison between the pending bill and the Walter-Logan bill, and between it and the recommendations of the Attorney General's committee.

The Walter-Logan bill, which was vetoed by the President, differed materially from the bill now before the Senate. The Walter-Logan bill, while distinguishing between regulations and adjudications, simply required administrative hearings for each, and provided special methods of judicial review. More particularly, in the matter of general regulations, the Walter-Logan bill failed to distinguish between the different classes of rules. It stated that rules should be issued within 1 year after the enactment of the statutory authority. It required a mandatory administrative review upon notice and hearing within a year, and set up a system of judicial review through declaratory judgments by the Court of Appeals for the District of Columbia within a limited time after the adoption of any rule.

In the adjudication of particular cases, the Walter-Logan bill also provided for administrative hearings of any controversy before a board of any three employees of any agency. Decisions of such boards were to be made within 30 days, under the Walter-Logan bill, and were subject to the apparently summary approval or modification of the head of the agency or his deputy. On the other hand, independent commissions—with not less than three members sitting—were required to hold a further hearing after any hearing by an examiner. A special form of judicial review was provided for any administrative adjudication. A long list of exemptions of agencies, by name, was included in the Walter-Logan bill.

Now let me point out some of the essential respects in which the pending bill differs from the Walter-Logan bill. The bill now before the Senate differentiates the several types of rules. It requires no agency hearings in connection with either regulations or adjudications unless statutes already do so in particular cases, thereby preserving rights of individual trials de novo. Where statutory hearings are otherwise provided, this bill fills in some of the essential requirements; and it provides for a special class of semi-independent subordinate hearing officers.

The bill includes several types of incidental procedures. It confers numerous procedural rights. It limits ad-

ministrative penalties. It contains more comprehensive provisions for judicial review for the redress of any legal wrong. And, since it is drawn entirely upon a functional basis, it contains no exemptions of agencies as such.

The pending bill is more complete than the solution favored by the majority of the Attorney General's committee, but is, at the same time, shorter and more definite than the proposal of the minority of that committee. While it follows generally the views of good administrative practice as expressed by the whole of that committee, it differs in several important respects.

The bill provides that agencies may choose whether their examiners shall make the initial decision or merely recommend a decision, whereas the Attorney General's committee made mandatory a decision by examiners.

The bill provides some general limitations upon administrative powers and sanctions, particularly in the rigorous field of licensing, while the Attorney General's committee did not touch upon that subject.

This bill relies upon independence, salary security, and tenure during good behavior of examiners within the framework of the civil service, whereas the Attorney General's committee favored short-term appointments approved by a special Office of Administrative Procedure.

If Senators desire to consult a more detailed comparison of the pending bill, with full references to the report of the Attorney General's committee, such a comparison is to be found in the third parallel column of the committee print issued by the Senate Judiciary Committee in June of 1945.

I cannot emphasize too strongly that the bill now before the Senate is not a specification of the details of administrative procedure. Neither is it a codification of administrative law. It represents, instead, an outline of minimum basic essentials, framed out of long consideration and in the light of the comprehensive studies I have previously mentioned.

To state it simply, this bill is designed to afford parties affected by administrative powers a means of knowing what their rights are, and how they may be protected. At the same time, administrators are provided with a simple course to follow in making administrative determinations. The jurisdiction of the courts is clearly stated. The bill thus provides for public information, administrative operation, and judicial review.

The substance of what the bill does may be summarized under four headings:

First. It provides that agencies must issue as rules certain specified information as to their organization and procedure, and also make available other materials of administrative law.

Second. It states the essentials of the several forms of administrative proceedings and the limitations on administrative powers.

Third. It provides in more detail the requirements for administrative hear-

ings and decisions in cases in which statutes require such hearings.

Fourth. It sets forth a simplified statement of judicial review designed to afford a remedy for every legal wrong.

The first of those four points is basic, because it requires agencies to take the initiative in informing the public. In stating the essentials of the different forms of administrative proceedings, the bill carefully distinguishes between the so-called legislative functions of administrative agencies—where they issue general regulations—and their judicial functions—in which they determine rights or liabilities in particular cases.

Quite different procedures are provided by the bill for the legislative and judicial functions of administrative agencies. In the rule-making, that is, legislative, function the bill provides that, with certain exceptions, agencies must publish notice and at least permit interested parties to submit their views in writing for agency consideration before issuing general regulations. No hearings are required by the bill unless statutes already do so in a particular case. Similarly, in adjudications—that is, the judicial function—no agency hearings are required unless statutes already do so, but in the latter case the mode of hearing and decision is prescribed. Where existing statutes require that either general regulations—which the bill calls rules—or particularized adjudications—which the bill calls orders—shall be made after agency hearing or opportunity for such hearing, then section 7 of the bill spells out the minimum requirements for such hearings; section 8 states how decisions shall be made thereafter, and section 11 provides for examiners to preside at hearings and make or participate in decisions.

While the administrative power and procedure provisions of sections 4, 5, 6, 7, 8, and 9 are law apart from court review, the provisions for judicial review provide parties with a method of enforcing their rights in a proper case. However, it is expressly provided that the judicial review provisions are not operative where statutes otherwise preclude judicial review, or where agency action is by law committed to agency discretion.

Five types of provisions compose this bill. They are:

First. Provisions which are largely formal, such as the sections setting forth the title, definitions, and rules of construction.

Second. Provisions which require agencies to publish or make available information on administrative law and procedure.

Third. Provisions for different kinds of procedures such as rule-making, adjudications, and miscellaneous matters, as well as for limitations upon sanctions and powers.

Fourth. Provisions concerning the detail for hearings and decisions as well as for examiners.

Fifth. Provisions for judicial review.

I desire to emphasize the fifth type of provisions, namely, provisions for judicial review, because it is something in which the American public has been and

is much concerned, harkening back, if we may, to the Constitution of the United States, which sets up the judicial branch of the Government for the redress of human wrongs and for the enforcement of human rights.

As I have already pointed out, the bill is so drafted that its several sections and subordinate provisions are closely knit. The substantive provisions of the bill should be read apart from the purely formal provisions and minor functional distinctions. The definitions in section 2 are important, but they do not indicate the scope of the bill, since the subsequent provisions make many functional distinctions and exceptions. The public information provisions of section 3 are of the broadest application because, while some functions and some operations may not lend themselves to formal procedure, all administrative operations should as a matter of policy be disclosed to the public except as secrecy may be obviously required or only internal agency "housekeeping" arrangements may be involved.

Sections 4 and 5 of the bill prescribe the basic requirements for the making of rules and the adjudication of particular cases. In each case, where other statutes require opportunity for an agency hearing, sections 7 and 8 set forth the minimum requirements for such hearings and the agency decisions thereafter, while section 11 provides for the appointment and tenure of examiners who may participate. Section 6 prescribes the rights of private parties in a number of miscellaneous respects which may be incidental to rule making, adjudication, or the exercise of any other agency authority. Section 9 limits sanctions, and section 10 provides for judicial review.

Again, I wish to call the attention of Senators to the chart on page 9 of the committee report on the bill.

Mr. President, an analysis of the bill, section by section, may prove helpful at this point. If Senators will refer to their copies of the bill, and follow me as I go along, I shall undertake to discuss each section of the bill in its proper order.

Section 1 refers to the title of the bill, and provides that the measure may be cited as the Administrative Procedure Act. Although this short title has been chosen for the sake of brevity, Senators will note, as I have previously pointed out, that the bill actually provides for both administrative procedure and judicial review.

Section 2 contains the definitions.

The word "agency" is defined by excluding legislative, judicial, and Territorial authorities, and by including any other "authority" whether or not within, or subject to review by, another agency. The bill is not to be construed to repeal delegations of authority provided by law. Expressly exempted from the term "agency," except for the public information requirements of section 3, are: First, agencies composed of representatives of parties or of organizations of parties; and, second, defined war authorities including civilian authorities functioning under temporary or named

statutes operative during "present hostilities."

The term "person" is defined to include specified forms of organization other than agencies.

The term "party" is defined to include anyone named, or admitted, or seeking, and entitled to be admitted, as party in any agency proceeding except that nothing in the subsection is to be construed to prevent an agency from admitting anyone as a party for limited purposes.

The term "rule" is defined as any agency statement of general applicability designed to implement, interpret, or prescribe law, policy, organization, procedure, or practice requirements.

The term "rule making" is defined to mean agency process for the formulation, amendment, or repeal of a rule, and includes any prescription for the future of rates, wages, financial structures, and so on.

The term "order" is defined to mean the final disposition of any matter, other than rule making but including licensing, whether or not affirmative, negative, or declaratory in form.

The term "adjudication" is defined as the agency process for the formulation of an order.

The term "license" is defined to include any form of required official permission, such as certificate, charter, and so on.

The term "licensing" is defined to include agency process respecting the grant, renewal, modification, denial, revocation, and so forth, of a license.

The term "sanction" is defined to include any agency prohibition, withholding of relief, penalty, seizure, assessment, requirement, restriction, and so on.

The term "relief" is defined to include any agency grant, recognition, or other beneficial action.

Mr. DONNELL. Mr. President, will the Senator yield?

The PRESIDING OFFICER (Mr. STEWART in the chair). Does the Senator from Nevada yield to the Senator from Missouri?

Mr. McCARRAN. I yield.

Mr. DONNELL. Will the Senator be kind enough to permit me to ask him a question in regard to one of the definitions in section 2? I am not clear as to the meaning of the language which reads as follows:

Except as to the requirements of section 3, there shall be excluded from the operation of this act (1) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them.

I should greatly appreciate it if the Senator would be kind enough to amplify somewhat his explanation of that provision.

Mr. McCARRAN. That provision might comprehend the National Labor Relations Board, the Railroad Retirement Board, and similar agencies, in which there are parties from various factions. For example, in the National Labor Relations Board there may be a representative from the employing agency, a representative from the employee group, and a representative of the general public.

The Railroad Retirement Board is of a similar nature.

Mr. DONNELL. I thank the Senator for the explanation.

Mr. REED. Mr. President, will the Senator yield?

Mr. McCARRAN. I yield.

Mr. REED. I confess a lack of understanding of the bill. I have had considerable experience with some of the Government agencies, particularly the Interstate Commerce Commission. Over the years the Congress has laid down rules of procedure instructing the Interstate Commerce Commission as to how to act in certain cases in the matter of rate making, valuations, and orders. All that is prescribed by statute. Is there anything in this bill that would interfere with that procedure?

Mr. McCARRAN. There is nothing in this bill which would interfere with such procedure.

Mr. REED. I was a little uncertain, due, of course, to my lack of understanding of the bill and my lack of opportunity to give it the study which it requires.

Mr. McCARRAN. I wish to make it very clear to the Senator, because I appreciate the fact that he has had long experience in practice before the Interstate Commerce Commission, that there is nothing in this bill which would take away from the Interstate Commerce Commission anything in the way of functions.

Mr. REED. And it would not change its method and rule of doing business when the method and rule is founded on statutory authority?

Mr. McCARRAN. That is correct.

Mr. REED. I thank the Senator.

Mr. McCARRAN. Let me say to the Senator from Kansas that that has been one of the great problems we have had to work out in the long months of study which we have devoted to the bill. We did not wish to disrupt or change anything that was statutory; and yet we wanted to establish something which would prescribe and define the avenue by which the individual citizen could gain access to a public agency which would touch his private life, and we wished to find for him a way through the procedure.

Mr. REED. I wish to pay tribute to the Senator from Nevada for the great amount of hard work he has done, and the vast amount of ability and intelligence which he has brought to bear upon this effort, which I hope will be successful. In the light of the great expansion of governmental activities into the private lives of our citizens, some protection of the citizen against these agencies should be provided. It is long overdue. I extend to the Senator from Nevada my appreciation of the great amount of work he has done, and the great ability he has brought to this task.

Mr. McCARRAN. I am very grateful to the Senator from Kansas. I have one ambition in life, and that is that this bill, when enacted into law—as I hope it will—will become a monument to the Congress of the United States for its careful study, and a monument to the Committee on the Judiciary of the Senate for the time, zeal, and diligence

which that committee has put into the construction of the bill.

Mr. AUSTIN. Mr. President, will the Senator yield?

The PRESIDING OFFICER (Mr. STEWART in the chair). Does the Senator from Nevada yield to the Senator from Vermont?

Mr. McCARRAN. I yield.

Mr. AUSTIN. Before the Senator leaves section 2, I should like to inquire about a phrase which is new to me. I refer to the expression "legal wrong" which appears in section 10 (a) on page 34, line 16, and which is used for the purpose of describing a person who is entitled to review. My inquiry is for the purpose of having the RECORD show what the intention of the author of the bill is with respect to the combination of words "legal wrong." For a long time we have known just what the meaning of "legal injury" is. It seems to me that by the use of the word "wrong" a much broader category of individuals is admitted to review. I suppose that was the benign purpose of the author of the bill; but I should like to have it in the RECORD as a definition, in the course of his address, while he is still on the subject of definitions.

In Bouvier's Law Dictionary, volume 3, page 3500, appears a definition of "wrong."

In its broad sense, it includes every injury to another, independent of the motive causing the injury (*Union Pacific Railway Company v. Henry*, 36 Kans. 570, 14 Pac. 1).

There is more to the definition. Is it the intent of the author of the bill to have the words "legal wrong" comprehend the scope of the definition of "wrong" as it appears in Bouvier's Law Dictionary?

Mr. McCARRAN. I have not in mind the language to which the able Senator refers, but the language as I heard him read it is rather common language addressing itself to that subject. My conception of the term "legal wrong" is set forth in the committee report on page 26:

The phrase "legal wrong" means such a wrong as is specified in subsection (e) of this section. It means that something more than mere adverse personal effect must be shown—that is, that the adverse effect must be an illegal effect. The law so made relevant is not just constitutional law, but any and all applicable law.

Let me read further in connection with the construction which I place on the term:

Reviewing courts are required to decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of any agency action. They must (A) compel action unlawfully withheld or unreasonably delayed and (B) hold unlawful any action, findings, or conclusions found to be (1) arbitrary, (2) contrary to the Constitution, (3) contrary to statutes or short of statutory right, (4) without observance of procedure required by law, (5) unsupported by substantial evidence upon the administrative record where the agency is authorized by statute to hold hearings subject to sections 7 and 8, or (6) unwarranted by the facts so far as the latter are subject to trial de novo.

I have tried to anticipate the question which the able Senator has propounded

to me. I am glad that he asked the question. I have tried to define the term, because I thought it might be well to have it defined in the RECORD.

Mr. AUSTIN. Mr. President, will the Senator further yield?

Mr. McCARRAN. I yield.

Mr. AUSTIN. I see the application of what the distinguished Senator has just stated to the following part of the clause in section 10 (a) namely, "or adversely affected or aggrieved by such action within the meaning of any relevant statute." That is another category of men and women who are entitled to review. But my question was limited to the category described as "any person suffering legal wrong because of any agency action." On this point I should like to read further from the definition of "wrong," because this is a new use of the word. If the author of the bill intends by the use of the term "legal wrong" what is here set forth, I should like to have it in the RECORD, because it would save a great deal of controversy. May I take the time of the Senator to read further from the definition of "wrong" in Bouvier's Law Dictionary?

Mr. McCARRAN. Yes; I should like to have the Senator read it.

Mr. AUSTIN. The definition is as follows:

Wrong. An injury; a tort; a violation of right.

In its broad sense, it includes every injury to another, independent of the motive causing the injury (*Union Pac. Ry. Co. v. Henry* (36 Kan. 570, 14 Pac. 1)).

A wrong is an invasion of right to the damage of the party who suffers it. It consists in the injury done, and not commonly in the purpose or mental or physical capacity of the person or agent doing it. It may or may not have been done with bad motive; the question of motive is usually a question of aggravation only (*Williams v. Hays* (143 N. Y. 447, 38 N. E. 449, 26 L. R. A. 153, 42 Am. St. Rep. 743)).

In its most usual sense, wrong signifies an injury committed to the person or property of another, or to his relative rights unconnected with contract; and these wrongs are committed with or without force. But in a more extended signification, wrong includes the violation of a contract; a failure by a man to perform his undertaking or promise is a wrong or injury to him to whom it was made (3 Bla. Com. 158).

A public wrong is an act which is injurious to the public generally, commonly known by the name of crime, misdemeanor, or offense; and it is punishable in various ways, such as indictments, summary proceedings and, upon conviction, by death, imprisonment, fine, etc.

Private wrongs, which are injuries to individuals, unafflicting the public; these are redressed by actions for damages, etc. See Remedies; Tort.

For a classification of wrongs, see Holland, Jurisprudence 270.

The combination of words used here is very significant. The adjective "legal" is a limiting adjective; and, as it has been applied in jurisprudence to "injury," it is defined as follows in Words and Phrases, fourth series, second volume, page 548:

"Legal injury" must be violation of some legal right and is distinct from "damage," which is harm, or loss, sustained by injury (*Combs v. Hargis Bank & Trust Co.* (27 S. W. (2d) 955, 956, 234 Ky. 202)).

For the sake of the future of those practicing under this estimable bill, I think it

would be well to have the RECORD show whether the distinguished author of the bill regards the category of persons entitled to review which is here described, that is, "any person suffering legal wrong" as any person who has suffered in the manner described in the quotation from Bouvier's Law Dictionary.

Mr. McCARRAN. Taking Bouvier and Words and Phrases combined, and taking the decisions of the courts of last resort, to whose language we have access, I should answer the Senator "yes." That is, I take into consideration all the definitions which apply to define that term, and I respectfully refer to the committee report, which I read a moment ago. It means that something more than mere adverse personal effect must be shown; that is, that the adverse effect must be an illegal effect. So, to Bouvier, to Words and Phrases, and to the decisions to which the able Senator refers, I also add the expression contained in the committee report.

Mr. AUSTIN. I thank the Senator.

Mr. McCARRAN. Let me go a little further, because I am very grateful to the Senator for bringing up this question. We asked the Attorney General and the Department of Justice to comment on this bill. I now read to the Senate the Attorney General's comment:

Section 10 (a): Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review of such action. This reflects existing law. In *Alabama Power Co. v. Ickes* (302 U. S. 464), the Supreme Court stated the rule concerning persons entitled to judicial review. Other cases having an important bearing on this subject are: *Massachusetts v. Mellon* (262 U. S. 447), *The Chicago Junction Case* (264 U. S. 258), *Sprunt & Son v. United States* (281 U. S. 249), and *Perkins v. Lukens Steel Co.* (310 U. S. 113). An important decision interpreting the meaning of the terms "aggrieved" and "adversely affected" is *Federal Communications Commission v. Sanders Bros. Radio Station* (309 U. S. 470).

Mr. President, I have referred the Senator to that expression coming from the Attorney General, in connection with this bill, to indicate to him and to the Senate the meticulous study which we have tried to give to this bill, so that we may construe the terms in such a way that there may be no divergence of views when we get through.

I realize that the layman says this is an intricate bill. In a way it is, and yet in a way it simplifies itself in practice.

Mr. AUSTIN. Mr. President, will the Senator yield?

The PRESIDING OFFICER (Mr. TUNNELL in the chair). Does the Senator from Nevada yield to the Senator from Vermont?

Mr. McCARRAN. I yield.

Mr. AUSTIN. I wish to compliment the Senator upon his courage in launching out with a new phrase like this. Personally, I think it is an improvement in the law.

Mr. McCARRAN. I am very grateful to the Senator.

Mr. DONNELL. Mr. President, will the Senator yield for an inquiry?

Mr. McCARRAN. I yield.

Mr. DONNELL. I should like to ask the distinguished Senator a question. Section 10 of the bill recites in part that—

Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—

(a) Right of review: Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

It has occurred to me the contention might be made by someone in undertaking to analyze this measure that in any case in which discretion is committed to an agency, there can be no judicial review of action taken by the agency. The point to which I request the Senator to direct his attention is this: In a case in which a person interested asserts that, although the agency does have a discretion vested in it by law, nevertheless there has been abuse of that discretion, is there any intention on the part of the framers of this bill to preclude a person who claims abuse of discretion from the right to have judicial review of the action so taken by the agency?

Mr. McCARRAN. Mr. President, let me say, in answer to the able Senator, that the thought uppermost in presenting this bill is that where an agency without authority or by caprice makes a decision, then it is subject to review.

But in answer to the first part of the Senator's question—namely, where a review is precluded by law—we do not interfere with the statute, anywhere in this bill. Substantive law, law enacted by statute by the Congress of the United States, granting a review or denying a review is not interfered with by this bill. We were not setting ourselves up to abrogate acts of Congress.

Mr. DONNELL. But the mere fact that a statute may vest discretion in an agency is not intended, by this bill, to preclude a party in interest from having a review in the event he claims there has been an abuse of that discretion. Is that correct?

Mr. McCARRAN. It must not be an arbitrary discretion. It must be a judicial discretion; it must be a discretion based on sound reasoning.

Mr. DONNELL. I thank the Senator.

Mr. AUSTIN. Mr. President, will the Senator yield to me once more?

Mr. McCARRAN. Yes; I yield.

Mr. AUSTIN. Is it not true that among the cases cited by the distinguished Senator were some in which no redress or no review was granted, solely because the statute did not provide for a review?

Mr. McCARRAN. That is correct.

Mr. AUSTIN. And is it not also true that, because of the situation in which we are at this moment, this bill is brought forward for the purpose of remedying that defect and providing a review to all persons who suffer a legal wrong or wrongs of the other categories mentioned?

Mr. McCARRAN. That is true; the Senator is entirely correct in his statement.

Mr. President, I now continue. I wish to say that I am exceedingly grateful for the interruptions; in fact, I do not consider them interruptions, but I consider them amplifications of the thought sought to be expressed by this proposed legislation.

Let me say to the Senators now present—and I think I can speak for the Committee on the Judiciary—that I do not believe a more important piece of legislation has been or will be presented to the Congress of the United States than the one which I am trying in my humble way to explain to the Senate today, because it deals with something which touches the most lowly as well as the most elevated and lofty citizen in the land. It touches every phase and form of human activity, and it deals with that which at the opening of my statement I described as the fourth dimension or fourth branch of our democracy. In other words, by the Constitution the executive, the legislative, and the judicial branches of our Government were set up; but now we have a fourth branch, the administrative form of our Government.

Mr. SMITH. Mr. President, will the Senator yield?

Mr. McCARRAN. I yield to the Senator from New Jersey.

Mr. SMITH. I should like to remark that I had the honor of being on the Judiciary Committee when this bill was first brought up; and it was because I felt so strongly what the distinguished Senator from Nevada has just said—namely, the vital importance of a measure of this kind—that I asked the privilege of having the committee postpone reporting the bill until I had had an opportunity as the Senator from Nevada will recall, to send copies of the bill to friends of mine in the legal profession, both in the State of New Jersey and in the State of New York, and to ask for their judgment. I wish if I may to pay the Senator from Nevada the tribute of saying that, without exception, the distinguished jurists who examined this bill said that it was one of the finest measures they had ever seen, and they were wholeheartedly behind it and urged its passage as soon as possible. I may say that certain minor suggestions were made, as the Senator may recall, with reference to possible changes here and there, and that points arose such as those which have arisen here on the floor. But I cannot allow this occasion to pass without paying my tribute to the Senator from Nevada for the great job which he has done, and for the care which he has taken over a period of possibly 3 years to bring before this body one of the most important pieces of judicial legislation of which I can conceive. I wish to go on record as supporting this measure and as supporting the Senator from Nevada in his effort to secure its passage.

Mr. McCARRAN. Mr. President, I am very grateful to the Senator from New Jersey for what he has said. I may say that, because of the Senator's outstanding contributions to the principles of law, and the fine guidance which the chairman of the committee received at his hands, it was a great regret to the chair-

man of the Judiciary Committee to learn that it was not possible for the Senator from New Jersey to remain with the committee.

Mr. MORSE. Mr. President, will the Senator from Nevada yield to me.

Mr. McCARRAN. I yield.

Mr. MORSE. Mr. President, I wish to commend the Senator from Nevada for the great work which he has done in the preparation and presentation of this bill to the Senate. As one who has taught in the field of administrative law for many years, I may say that the bill supplies what has been to me a very obvious need in the administration of government by law, in that it recognizes the relationship between procedural rights and substantive rights as such rights relate to administrative law.

For many years I have spoken and written in support of the basic principles embodied in the pending bill. I particularly commend the Senator from Nevada for the recommendation contained in the bill of at least a rule of evidence stronger than the some-evidence rule. As I understand the bill in its present form, it recognizes and approves the substantial evidence rule. I believe that in the future, however, as the Congress deals with specific administrative law agencies and tribunals, we will have to recognize that in some particular instances we need an evidence rule even stronger than the substantial evidence rule. In many instances it seems to me that the weight-of-evidence rule should be the rule used to govern judicial reviews of the decisions of many administrative tribunals.

Mr. McCARRAN. Mr. President, I am very grateful to the Senator from Oregon for his observations, and for his knowledge of the law.

I wish now to proceed section by section with an explanation of the bill.

Mr. BARKLEY. Mr. President, before the Senator continues, I ask that he yield to me because he might wish to have in mind, in making his explanation, what I am about to say.

Several years ago there was before the Congress the Walter-Logan bill, which was an administrative law measure. I was not in favor of that measure. I opposed it as actively as I could. I felt that under the terms of the bill the agencies of the Government established by Congress would be woefully handicapped in carrying on their functions, because of interminable delay and long drawn out proceedings which might be involved, thereby resulting in nullifying acts of the legislative departments until such time as the acts would be of no value even if carried out. Congress passed the bill and President Roosevelt, as I recall, vetoed it.

The pending bill is a new effort to deal with the subject about which we all admit something should be done.

When the Senator explains the terms of the bill section by section will it be his purpose to show in what respect and in what way the Walter-Logan measure has been modified, or provisions of it have been eliminated, so as to remove some of the objections some of us had to that proposed legislation?

Mr. McCARRAN. A few days ago the able Senator from Kentucky evinced his attitude with reference to the Walter-Logan bill, and I knew of his attitude with reference to it. Therefore, I have now prepared a presentation of comparisons of provisions. I have done so by way of explanation, I may say in answer to the Senator. It would be impossible for me to compare the Walter-Logan bill provision by provision with the pending bill, for the mere reason that they are two entirely different bills. They relate to the same subject, but they approach it in entirely different ways. However, I believe that I can illustrate the difference in a few words.

The pending bill is designed to set forth minimum procedural essentials for various types of functions. It does not refer to agencies by name. It contains no exceptions. It is thus not aimed at any particular agency or agencies. The Walter-Logan bill, on the other hand, contained a great many exceptions of agencies and subjects. Section 7 (b) was thought to indicate either that it was aimed at particular agencies, or was so imperfectly conceived that it could not be applied across the board. The pending bill does, however, in section 2 (a), exempt war agencies, because they are presumably self-liquidating, and it was deemed unwise to attempt to cover them at this late date.

The definitions of the Walter-Logan bill were imperfect and confusing. Rules were so defined as to include "orders" and were limited to interpretations of terms of statutes. That bill, therefore, failed to distinguish between substantive, interpretive, and procedural rules. The pending bill exempts from its procedural requirements all interpretive, organizational, and procedural rules, because under present law interpretive rules, being merely adaptations of interpretations of statutes, are subject to a more ample degree of judicial review, and because the problem with respect to the other exempted types of rules is to facilitate their issuance rather than to supply procedures.

The pending bill, therefore, applies procedures only to the making of so-called substantive rules, that is, through administrative legislation under authority of Congress. Other definitions in the Walter-Logan bill are entirely different from those in the pending bill, but, in answer to the Senator from Kentucky, I believe that nothing will be gained by examining those differences here.

Mr. BARKLEY. In other words, the Senator's bill is the result of a careful study of the whole subject made since the consideration by Congress of the Walter-Logan bill, and since the formal veto of that measure by the President, and the recommendation of former Attorney General Homer Cummings who, I believe, as one of the last things which he did before retiring, recommended legislation along this line without going into detail about it. Subsequently a committee was appointed, perhaps by the present Attorney General or one of his predecessors—

Mr. McCARRAN. A former Attorney General.

Mr. BARKLEY. A former Attorney General, all of which took place following the consideration of the previous legislation known as the Walter-Logan bill, or the Logan-Walter bill, I do not know which. However, in the main, the pending bill complies with the recommendations of the various investigations which have been made since consideration of the Walter-Logan bill with respect to legislation upon this subject.

Mr. McCARRAN. I would not use the word "complies." I would say that the bill takes into consideration those studies and is guided by them.

Mr. BARKLEY. I did not mean in my use of the word "complies" that the bill followed the recommendations word for word, but it does take into consideration the facts developed by the various investigations to which I have referred. The committee has been, of course, well informed as to the validity of any recommendations made upon the subject, but it does approach the subject from the standpoint of helpfulness in the administration of the law, rather than from the standpoint of undertaking to nullify what executive departments set up by Congress might be attempting to do.

Mr. McCARRAN. Positively, we nullify nothing.

Mr. BARKLEY. That was my objection to the former measure, as the Senator will recall.

Mr. McCARRAN. I do recall very well. I may say to the Senator from Kentucky that earlier in my discourse upon the pending bill I discussed the differentiations between the Walter-Logan bill and the Attorney General's committee report, and so on.

Mr. BARKLEY. I was necessarily called from the Chamber and was not present.

Mr. McCARRAN. I realize that.

Mr. President, section 3 of the bill concerns provisions respecting public information and it should be noted that the bill exempts from the public information provisions of this section, first, matters requiring secrecy in the public interest, and second, matters relating solely to the internal management of an agency.

Subsection (a) of section 3 concerns rules. Under this subsection every agency is required to publish in the Federal Register its organization, its places of doing business with the public, its methods of rule making and adjudication, including the rules of practice relating thereto, and such substantive rules as it may frame for the guidance of the public. No person is in any manner to be required to resort to organization or procedure not so published.

Subsection (b) of section 3 concerns opinions and orders. Under this subsection agencies are required to publish or, pursuant to rule, to make available to public inspection all final opinions or orders in the adjudication of cases except those held confidential for good cause and not cited as precedents.

Subsection (c) of section 3 concerns public records, and provides that except as statutes may require otherwise, or information may be held confidential for good cause, matters of official record are to be made available to persons properly

and directly concerned, in accordance with rules to be issued by the agency.

Section 4 concerns rule making. The introductory clause exempts from all of the requirements of section 4 any rule making, so far as there are involved military, naval, or foreign affairs functions, or matters relating to agency management or personnel, or to public property, loans, grants, benefits, or contracts.

Mr. President, I wish the Senate would give close consideration to what I am about to discuss, because it is all important.

Subsection (a) of section 4 concerns notice. It provides that general notice of proposed rule making must be published in the Federal Register and must include the time, place, and nature of the proceedings, a reference to the authority under which such proceedings are held, and the terms, substance, or issues involved. However, except where notice and hearing is required by some other statute, the subsection does not apply to rules other than those of substance, or where the agency for good cause finds, and incorporates the finding and reasons therefor in the published rule, that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.

Subsection (b) of section 4 concerns procedures. This subsection provides that after such notice as required by the preceding subsection, the agency must afford interested persons an opportunity to participate in the rule-making, at least to the extent of submitting written data, views, or argument. This subsection also provides that after consideration of such presentations, the agency must incorporate in any rules adopted a concise general statement of their basis and purpose. However, where other statutes require rules to be made after hearing, the requirements of sections 7 and 8, which relate to public hearings and decisions thereon, apply in place of the provisions of this subsection.

Subsection (c) of section 4 refers to effective dates. The required publication or service of any substantive rule must, under this provision, be made not less than 30 days prior to the effective date of such rule, except as otherwise provided by the agency for good cause found and published, or, in the case of rules recognizing exemption or relieving restriction, interpretative rules, and statements of policy.

Subsection (d) of section 4 concerns petitions, and provides that every agency shall accord any interested person the right to petition for the issuance, amendment, or repeal of a rule.

Section 5 of the bill concerns adjudications. The initial provision of this section makes it clear that subsequent provisions of the section apply only where the case is otherwise required by statute to be determined upon an agency hearing, except that, even in that case, the following classes of operations are expressly not affected: First, cases subject to trial de novo in court; second, selection or tenure of public officers other than examiners; third, decisions resting on inspections, tests, or elections; fourth, military, naval, and foreign affairs functions; fifth, cases in which an agency is

acting for a court; and, sixth, the certification of employee representatives.

Subsection (a) of section 5 refers to notice. Under this subsection, persons entitled to notice of an agency hearing are to be duly and timely informed of the time, place, and nature of the hearing, the legal authority and jurisdiction under which it is to be held, and the matters of fact and law asserted. Where private persons are the moving parties, respondents must give prompt notice of issues controverted in law or fact; and in other cases the agency may require responsive pleading. In fixing the times and places for hearings the agency must give due regard to the convenience and necessity of the parties.

Subsection (b) of section 5 concerns procedure. Under this subsection the agency is required first to afford parties an opportunity for the settlement or adjustment of issues, where time, the nature of the proceeding, and the public interest permit; and then requires that such opportunity for settlement or adjustment be followed, to the extent that issues are not so settled or adjusted, by hearing and decision under sections 7 and 8.

Subsection (c) of section 5 concerns the separation of functions. It provides that officers who preside at the taking of evidence must make the decision or recommended decision in the case. They may not consult with any person or party except openly and upon notice, save in the disposition of customary ex parte matters, and they may not be made subject to the supervision of prosecuting officers. Prosecuting officers may not participate in the decisions except as witnesses or counsel in public proceedings. However, the subsection is not to apply in determining applications for initial licenses or the past reasonableness of rates; nor does it apply to the top agency or members thereof.

Subsection (d) of section 5 provides that every agency is authorized, in its sound discretion, to issue declaratory orders with the same effect as other orders.

Section 6 concerns ancillary matters. The provisions of this section relating to incidental or miscellaneous rights, powers, and procedures do not override contrary provisions in any other part of the bill.

Subsection (a) of section 6 refers to appearance. It provides that any person compelled to appear in person before any agency or its representative is entitled to counsel. In other cases, every party may appear in person or by counsel. So far as the responsible conduct of public business permits, any interested person may appear before any agency or its responsible officers at any time for the presentation or adjustment of any matter. Agencies are to proceed with reasonable dispatch to conclude any matter so presented, with due regard for the convenience and necessity of the parties. Nothing in the subsection is to be taken as recognizing or denying the propriety of nonlawyers representing parties.

Mr. AUSTIN. Mr. President, before the Senator leaves that thought, I wish to ask a question. I notice on page 28

of the bill, line 7, in the section to which the Senator is referring, this language:

Nothing herein shall be construed either to grant or to deny to any person who is not a lawyer the right to appear for or represent others before any agency or in any agency proceeding.

Is it not a fact that somewhere in the bill the distinguished Senator has reserved the right to a nonprofessional—that is, a man who is not a lawyer—to appear, if the agency having jurisdiction permits it? That is, there is a discretion permitted, is there not? For example, take a case where a scientific expert would better represent before the Commission the interests involved than would a lawyer. The right to obtain that privilege is granted in the bill somewhere, is it not?

Mr. McCARRAN. The Senator is correct; and in connection with that I wish to read from the Attorney General's comment, as follows:

This subsection does not deal with, or in any way qualify, the present power of an agency to regulate practice at its bar. It expressly provides, moreover, that nothing in the act shall be construed either to grant or to deny the right of nonlawyers to appear before agencies in a representative capacity. Control over this matter remains in the respective agencies.

That is the Attorney General's observation.

Mr. AUSTIN. Mr. President, will the Senator yield to me further?

Mr. McCARRAN. Gladly.

Mr. AUSTIN. I wish to ask the Senator if the provision of the bill which I shall now read means to make permissible the appearance for a principal of any person the agency deems appropriate. I read:

Any person compelled to appear in person before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative.

Does the Senator construe that language as authorizing, for example, a principal to be represented by an accountant?

Mr. McCARRAN. The answer is emphatically "yes."

Mr. McKELLAR. Mr. President, will the Senator yield?

Mr. McCARRAN. I yield.

Mr. McKELLAR. The next sentence following the one which the distinguished Senator from Vermont has just read apparently provides for that. The language is:

Every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in any agency proceeding.

That language seems to be broad enough to cover the whole matter.

Mr. AUSTIN. I hope it does, Mr. President.

Mr. McKELLAR. I hope so, too.

Mr. AUSTIN. I have doubt about it, however. The word "representative" having a special legal interpretation, I did not know but that it was limited to that. That is why I asked the question.

Mr. McCARRAN. I want to make very clear that my answer is in the af-

firmative both to the Senator from Vermont and to the Senator from Tennessee.

Mr. FERGUSON. Mr. President, will the Senator yield?

Mr. McKELLAR. I yield.

Mr. FERGUSON. Did the Senator say that the language guarantees the right of a person in all cases to appear by his counsel?

Mr. McCARRAN. Positively so.

Mr. FERGUSON. How would the Senator define the word "counsel"? Does that mean lawyer?

Mr. McCARRAN. He may be a lawyer or he may be a nonlawyer.

Mr. FERGUSON. He may be a nonlawyer. Then could the agency determine what particular person may be qualified to appear before it?

Mr. McCARRAN. Will the Senator repeat the question?

Mr. FERGUSON. Could the agency itself determine the qualifications of representatives of parties?

Mr. McCARRAN. It is left open so that the agency may determine the qualification of any one who may appear in certain classes of cases. As, for instance, in an accusatory case, where one is accused of something, he may be required to appear by attorneys so as to defend him in his rights.

Mr. FERGUSON. Let us consider the Tax Board. Could the Board itself determine that certain individuals were qualified to appear and that other persons were not qualified to appear?

Mr. McCARRAN. The answer to that question is "No." The Board could not do so. The Board would have to accept lawyers or nonlawyers, as the case might be, because a tax expert may not be a lawyer.

Mr. FERGUSON. Let us take the patent bar.

Mr. McCARRAN. The same is true in that case. A certified public accountant, for instance, may not be a lawyer, but he could appear.

Mr. AUSTIN. Mr. President, the only point is that he would have to be permitted to appear.

Mr. McCARRAN. That is true. He would have to be permitted by the agency to appear. There is an explanatory statement in the committee report which I desire to read. It refers to subsection (a) of section 6, and is found on page 19 of the report:

The final sentence provides that the subsection shall not be taken to recognize or deny the right of nonlawyers to be admitted to practice before any agency, such as the practitioners before the Interstate Commerce Commission.

That has become quite an outstanding practice.

The use of the word "counsel" means lawyers. While the subsection does not deal with the matter expressly, the committee does not believe that agencies are justified in laying burdensome admission requirements upon members of the bar in good standing before the courts. The right of agencies to pass upon the qualifications of nonlawyers, however, is expressly recognized and preserved in the subsection.

Mr. FERGUSON. Mr. President, will the Senator yield?

Mr. McCARRAN. Yes.

Mr. FERGUSON. The last sentence read by the able Senator would indicate that if a member of the bar was in good standing before the bar he would have the right to appear. Only with respect to nonmembers of the bar could the agency make determination as to whether they have the qualifications to appear before it.

Mr. McCARRAN. That is correct.

Mr. McKELLAR. Mr. President, will the Senator again yield?

Mr. McCARRAN. I yield.

Mr. McKELLAR. May I ask the Senator a very general question, which will show that I have not examined the bill with care? Do I correctly understand that the principal purpose of the bill is to allow persons who are aggrieved as the result of acts of governmental agencies to appeal to the courts?

Mr. McCARRAN. Yes.

Mr. McKELLAR. That is the general underlying purpose of the bill?

Mr. McCARRAN. Yes. But let me add, that where a statute denies resort to the court the bill would not set aside such statute. If a statute denies the right of review, the bill does not interfere with the statute.

Mr. McKELLAR. The bill applies only to orders.

Mr. McCARRAN. The bill paves the avenue by which administrative procedure may be conducted in orderly fashion, and by which an individual aggrieved and believing he has a right to appear before an administrative body may find his way clearly defined to get before that body.

Mr. McKELLAR. If not otherwise prohibited by existing law.

Mr. McCARRAN. Yes.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. McCARRAN. I yield.

Mr. BARKLEY. The bill assumes then that when Congress has heretofore passed legislation providing that there shall be no access to a court, Congress had a particular reason for enactment of such legislation, and the bill's provisions would also apply to future legislation of similar kind.

Mr. McCARRAN. Yes. I shall now proceed with my statement.

Subsection (b) of section 6 concerns investigations. It provides that investigative process is not to be issued or enforced except as authorized by law. Persons compelled to submit data or evidence are entitled to retain, or, on payment of costs, to procure, copies of such data or evidence, except that in nonpublic proceedings a witness may for good cause be limited to inspection of the official transcript.

Subsection (c) of section 6 concerns subpoenas. It provides that where agencies are by law authorized to issue subpoenas, parties may secure them upon request and upon a statement or showing of general relevance and reasonable scope if the agency rules so require. Where a party contests a subpoena, the court is to inquire into the situation, and, so far as the subpoena is found in accordance with law, the court is to issue an order requiring the production of the

evidence under penalty of contempt for failure then to do so.

Subsection (d) of section 6 requires that prompt notice shall be given of denials of requests in any agency proceeding, and that such notice shall be accompanied by a simple statement of grounds for such denial.

Section 7 concerns hearings and applies only where hearings are required by section 4 or 5.

Subsection (a) of section 7 provides that the hearing must be held either by the agency, a member or members of the board which comprises it, one or more examiners, or other officers specially provided for in other statutes or designated by other statutes. All presiding and deciding officers are to operate impartially. They may at any time withdraw if they deem themselves disqualified; and, upon the filing of a proper affidavit of personal bias or disqualification against them, the agency is required to determine the matter as a part of the record and decision in the case.

Subsection (b) of section 7 concerns hearing powers. It provides that presiding officers, subject to the rules of procedure adopted by the agency and within its powers, have authority as follows: First, to administer oaths; second, to issue such subpoenas as are authorized by law; third, to receive evidence and rule upon offers of proof; fourth, to take depositions or cause depositions to be taken; fifth, to regulate the hearing; sixth, to hold conferences for the settlement or simplification of the issue; seventh, to dispose of procedural requests; eighth, to make decisions or recommended decisions under section 8 of the bill; and, ninth, to exercise other authority as provided by agency rule consistent with the remainder of the bill.

Subsection (c) of section 7 relates to evidence. It provides that except as statutes otherwise provide, the proponent of a rule or order has the burden of proof. While any evidence may be received, as a matter of policy agencies are required to provide for the exclusion of irrelevant and unduly repetitious evidence, and no sanction may be imposed, or rule or order issued, except as supported by relevant, reliable, and probative evidence. Any party may present his case or defense by oral or documentary evidence, may submit rebuttal evidence, and may conduct reasonable cross-examination. However, in the case of rule making or determining applications for initial licenses, the agency may adopt procedures for the submission of evidence in written form so far as the interest of any party will not be prejudiced thereby.

Mr. AUSTIN. Mr. President, at that point I wish the Senator from Nevada would yield for a question.

Mr. McCARRAN. I gladly yield to the Senator from Vermont.

Mr. AUSTIN. Did the committee intentionally choose the language "except as supported by relevant, reliable, and probative evidence" in order to avoid the rule of scintilla of proof? This phrase is very significant, as I see it. On review, for example, the case, in order to carry through as decided by the agency, would

have to be supported by relevant, reliable, and probative evidence. That is, in my opinion, a very important forward step in judicial procedure, to say nothing about administrative procedure. For my part I am glad to see it in the bill.

Mr. McCARRAN. Let me say to the Senator from Vermont that in the preparation of this bill many obstacles were encountered. Some of us insisted that the testimony must be relevant, material, and competent, and that nothing else should be taken. However, representatives of agencies came before us and presented their views, saying that such a rule would curtail their operations, and that they ought to be given greater latitude. They said to us, "We are not lawyers." We are acting in a quasi-judicial capacity. We ought to be able to go outside and get hearsay testimony, if you please. We might be able to indulge in theory." So rather than curtail the agencies, we sought an intermediate ground which we thought would be protective of the rights of individuals, and at the same time would not handicap the agencies. So we said to them, "You may go outside and get what would be secondary evidence, or hearsay; you may perhaps even go into the realm of conjecture; but when you write your decision it must be based upon probative evidence and nothing else. If in the formation of your decision you consider other than probative evidence, your decision will be subject to being set aside by a court of review."

In other words, we did not wish to destroy the administrative agencies or proscribe the methods under which they have been operating. Some of us know that in committees of the Senate we very frequently hear evidence which we know is hearsay. I doubt very much if any hearing is ever conducted in which, to some extent, hearsay is not admitted. But we believed, and we now believe, that reasonable men can sift the grain from the chaff. Then we laid down the rule that the administrative agencies must not make a finding which impinges upon an individual unless there is behind such finding probative evidence to sustain it. That is what we have worked out in this bill. I have given the explanation at some length in answer to the Senator from Vermont.

Mr. FERGUSON. Mr. President, will the Senator yield?

Mr. McCARRAN. I yield.

Mr. FERGUSON. Would the Senator, then, say that the judgment or decision of the agency must be based upon stronger proof than a scintilla of evidence?

Mr. McCARRAN. Very much stronger.

Mr. FERGUSON. The old rule which applied in the courts, particularly on certiorari, was that if there was any evidence to sustain the verdict or judgment, it should be sustained. The courts have many times so held. The Senator would say, would he not, that something more than "any evidence" is required to sustain such a decision.

Mr. McCARRAN. The answer is in the affirmative. We say that the evidence must be substantial probative evidence.

Mr. FERGUSON. So we are changing the rule which has been applied in

the past that any evidence, or a scintilla of evidence, as it is sometimes defined, is sufficient to sustain a verdict or judgment.

Mr. McCARRAN. We tried as best we could to establish a guide for administrative groups so that they would apply the rule in such a way that there would be substantial probative evidence behind their findings, and so that they could say, "We are not afraid to have our findings reviewed by a court."

Mr. GEORGE. Mr. President, will the Senator yield?

Mr. McCARRAN. I yield.

Mr. GEORGE. The courts have many times held that if there is any evidence to sustain the finding of an administrative board under the statute, the courts have no power to intervene. If this bill should become a law would that rule, as heretofore construed by the courts, remain in effect?

Mr. McCARRAN. The courts have given various constructions. The courts, in reviewing an order, are governed by the provisions of section 10 (e), which states the substantial-evidence rule. In other words, in some instances the courts have held that there must be substantial evidence. We are saying that there must be probative evidence of a substantial nature, and that even though the commission or bureau may take hearsay evidence in its hearings, it must have some probative evidence to sustain its finding.

Mr. GEORGE. The point I wish to raise is that some of the acts of Congress, particularly those enacted in recent years, have led the courts to hold—and they so hold—that if there be any evidence to sustain the finding of a board or agency, the court has no power to interfere with it.

Mr. McCARRAN. I would put it in this way—

Mr. GEORGE. Would the enactment of this bill require some substantial or probative evidence to support such a finding?

Mr. McCARRAN. Yes.

Mr. GEORGE. Take the labor relations cases. Senators are familiar with them. The circuit courts have frequently complained against what the Labor Relations Board did, but have said, "We are powerless to interfere with it." Would this bill change that rule, if the court were of the opinion that there was no probative evidence?

Mr. McCARRAN. Yes; it would change that rule.

Mr. GEORGE. I am pleased to hear it.

Mr. McCARRAN. I thank the Senator.

Subsection (d) of section 7 provides that the record of evidence taken and papers filed is exclusive for decision, and, upon payment of costs, is available to the parties. Where decision rests on official notice of a material fact not appearing in the evidence of record, any party may on timely request show the contrary.

Section 8 relates to decisions, and applies to cases in which a hearing is required to be conducted pursuant to section 7.

Subsection (a) of section 8 relates to action by subordinates. It provides that where the agency has not presided at the reception of the evidence, the presiding officer, or any other officer qualified to preside, in cases exempted from subsection (c) of section 5, must make the initial decision unless the agency, by general rule or in a particular case, undertakes to make the initial decision. If the presiding officer makes the initial decision, it becomes the decision of the agency in the absence of an appeal to the agency or review by the agency on its own motion. On such appeal or review, the agency has all the powers it would have had in making the initial decision. If the agency makes the initial decision without having presided at the taking of the evidence, whatever officer took the evidence must first make a recommended decision, except that, in rule making or determining applications for initial licenses, the agency may instead issue a tentative decision or any of its responsible officers may recommend a decision, or such intermediate procedure may be wholly omitted in any case in which the agency finds on the record that the execution of its functions imperatively and unavoidably so requires.

Subsection (b) of section 8 concerns submittals and decisions. It provides that prior to each recommended or other decision or review, the parties must be given an opportunity to submit for the full consideration of deciding officers, first, proposed findings and conclusions, or exceptions to recommended decisions or other decisions being appealed or reviewed; and, second, supporting reasons for such findings, conclusions, or exceptions. All recommended or other decisions become a part of the record and must include findings and conclusions, as well as the basis therefor, upon all the material issues of fact, law, or discretion presented by the record, besides including the appropriate agency action or denial.

Section 9 concerns sanctions and powers, and relates to the exercise of any power or authority by an agency.

Unlike sections 7 and 8, section 9 applies in all relevant cases, regardless of whether the agency is required by statute to proceed upon hearing or in any special manner. Section 9 also applies to any power or authority that an agency may assume to exercise.

Subsection (a) of section 9 requires that no sanction may be imposed, or substantive rule or order issued, except within the jurisdiction delegated to the agency, and as authorized by law.

Subsection (b) of section 9 refers to licenses. Under this subsection, agencies are required, with due regard for the rights or privileges of all interested parties or persons adversely affected, to proceed with reasonable dispatch to conclude and decide proceedings on applications for licenses. Under this subsection, agencies are not to withdraw a license without first giving the licensee notice in writing and an opportunity to demonstrate or achieve compliance with all lawful requirements, except in cases of wilfulness or those in which public health, interest, or safety requires otherwise. In businesses of a continuing na-

ture, no license is to expire until timely applications for new licenses or renewals are determined by the agency.

Section 10 is the section which relates to judicial review. This section does not apply in any situation so far as there are involved matters with respect to which existing statutes preclude judicial review, or with respect to which agency action is by law committed to agency discretion.

Subsection (a) of section 10 provides that any person suffering legal wrong because of any agency action, or adversely affected within the meaning of any statute, is entitled to judicial review.

Subsection (b) of section 10 concerns the form and venue of action. It provides that the technical form of proceeding for judicial review is any special proceeding provided by statute, or, in the absence or inadequacy thereof, any relevant form of legal action, such as those for declaratory judgments or injunctions, in any court of competent jurisdiction. Furthermore, under this subsection, agency action is also made subject to judicial review in any civil or criminal proceeding for enforcement, except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.

Subsection (c) of section 10 concerns reviewable acts of agencies. This subsection provides that agency action made reviewable specially by statute, or final agency action for which there is no other adequate judicial remedy, is subject to judicial review. In addition, preliminary or procedural matters not directly subject to review are made reviewable upon the review of final actions. Except as statutes may expressly require otherwise, agency action is final regardless of whether there has been presented or determined any application for a declaratory order, for any form of reconsideration, or unless the agency otherwise requires by rule, for an appeal to superior agency authority.

Subsection (d) of section 10 concerns interim relief. It provides that pending judicial review, any agency may postpone the effective date of its action. Upon conditions, and as may be necessary to prevent irreparable injury, any reviewing court may postpone the effective date of any agency action, or preserve the status quo pending conclusion of review proceedings.

Subsection (e) of section 10 concerns the scope of review. Under this subsection, reviewing courts are required to decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of any agency action. Such courts are required to compel action shown to be unlawfully withheld or unreasonably delayed. They are required to hold unlawful any action, findings, or conclusions found to be either arbitrary or contrary to the Constitution or contrary to statutes or short of statutory right or without observance of procedure required by law or unsupported by substantial evidence upon the administrative record, where the agency is authorized by statute to hold hearings subject to sections 7 and 8, or unwarranted by the facts insofar as the latter are subject to trial de novo. In making these

determinations the court is to consider the whole record or such parts as the parties may cite, and due account must be taken of the rule of prejudicial error.

Section 11 relates to examiners. It provides that, subject to the civil-service and other laws not inconsistent with this bill, agencies are required to appoint such examiners as may be necessary for proceedings under sections 7 and 8. Such examiners are to be assigned to cases in rotation, insofar as practicable and are to perform no inconsistent duties. Under this section, examiners are removable only for good cause determined by the Civil Service Commission, after opportunity for hearing, and upon the record thereof. Examiners are to receive compensation prescribed by the Civil Service Commission independently of agency recommendations or ratings. One agency may, with the consent of another and upon selection by the Civil Service Commission, borrow examiners from another agency. The Civil Service Commission is given the necessary powers to operate under this section.

Section 12 relates to the construction and effect of the bill. It provides that nothing in the bill is to diminish constitutional rights or limit or repeal additional requirements of law. It provides that requirements of evidence and procedure are to apply equally to agencies and private persons, except as otherwise provided by law. The unconstitutionality of any portion or application of the bill is not to affect other portions or applications. Agencies are granted all authority necessary to comply with the bill. Subsequent legislation is not to modify the bill except as it may do so expressly. The bill would become law 3 months after its approval, except that sections 7 and 8 would take effect 6 months after approval, the requirements of section 11 would become effective a year after approval, and no requirement is mandatory as to any agency proceeding initiated prior to the effective date of such requirement.

That completes the synopsis of the bill.

Mr. President, as I have pointed out before, this bill is designed to operate as a whole, and its provisions are closely interrelated. At the same time, it should be pointed out that there are certain provisions which touch upon subjects long regarded as of the highest importance. On some of these subjects, such as the separation of examiners from the agencies they serve, there has been a wide divergence of views. The committee has, in such cases, taken the course which it believes will suffice, without being excessive. Amendatory or supplementary legislation can supply any deficiency which experience discloses in such cases. The committee believes that special note should be made of these situations:

The exemption of rule making and determining applications for licenses, from provisions of sections 5 (c), 7 (c), and 8 (a) may require change if, in practice, it develops that they are too broad. The committee believes it has followed sound discretion in selection of the language used, and it is the feeling of the committee that, where cases present sharply

contested issues of fact, agencies should not as a matter of good practice take advantage of the exemptions.

The committee has considered the possibility that the preservation in section 7 (a) of the "conduct of specified classes of proceedings in whole or part by or before boards or other officers specially provided for by or designated pursuant to statute" might prove to be a loophole for avoidance of the examiner system. If experience should prove this true in any real sense, corrective legislation would be or might be necessary. Therefore, the committee desires that Government agencies should be put on notice that the provision in question is not intended to permit agencies to avoid the use of examiners, but only to preserve special statutory types of hearing officers who contribute something more than examiners could contribute, and at the same time to assure the parties fair and impartial procedure.

The basic provision respecting evidence, in section 7 (c)—the provision requiring that any agency action must be supported by plainly "relevant, reliable, and probative evidence"—will require full compliance by agencies, and diligent enforcement by reviewing courts, and so forth. Should the language prove insufficient to fix and maintain the standards of proof, supplemental legislation will become necessary. That is another matter which, at the outset of legislation such as this must depend upon the spirit in which the agencies attempt to comply fully with the law. The committee anticipates nothing less than full compliance and adequate enforcement; and, with such compliance and enforcement, the committee believes that the language in question will be adequate.

Another extremely important matter is the substantial evidence rule contained in section 10 (e).

As a matter of language, "substantial evidence" would seem to be an adequate expression of law. The difficulty, if any, arises from the practice of agencies to rely upon—and, in some cases, the tendency of courts to tacitly approve—something less than adequate evidence; to rely upon suspicion, surmise, implications, or plainly incredible evidence. It will be the duty of the courts to determine, in the final analysis, and in the exercise of their independent judgment, whether on the whole the evidence in a given instance is sufficiently substantial to support a finding, conclusion, or other agency action as a matter of law. In the first instance, however, it will be the function of the agency to determine the sufficiency of the evidence upon which it acts; and the proper performance of its public duties will require the agency to undertake this inquiry in a careful and dispassionate manner. Should these objectives of the bill, as worded, fail to produce the desired result, supplemental legislation will be required.

Mr. AUSTIN. Mr. President, will the Senator yield at this point?

Mr. McCARRAN. I yield.

Mr. AUSTIN. In the event that there is no statutory method now in effect for review of a decision of an agency, does the distinguished author of the bill contemplate that by the language he has

chosen he has given the right to the injured party or the complaining party to a review by such extraordinary remedies as injunction, prohibition, quo warranto, and so forth?

Mr. McCARRAN. My answer is in the affirmative. That is true.

Mr. AUSTIN. And does he contemplate that even where there is no statutory authority for certiorari, a party might bring certiorari against one of these agencies?

Mr. McCARRAN. Unless the basic statute prohibits it.

Mr. AUSTIN. I thank the Senator.

Mr. McCARRAN. Mr. President, what follows in my explanation is largely the expression of the opinion of the author of the bill. I have gone through the various sections of the bill section by section.

The matters which I have just mentioned do not include all the provisions of this bill which will require vigilant attention in order to assure their proper operation. Almost any provision of the bill, if wrongly interpreted, or minimized, may present occasion for supplemental legislation. On the other hand, should it appear at any time that the requirements result in some undue impairment of a particular administrative function, appropriate amendments or exceptions may be in order.

This bill enters a new legislative field. It attempts to provide a form and scope of protection long overdue. In the nature of things, we must anticipate that experience will indicate certain points at which the law should be strengthened or amended. But, Mr. President, it would be folly to contend that the protection which this bill seeks to give should be deferred until it is possible to come here and say: "This bill is perfect." Because, Mr. President, that day cannot come until we have had the experience of operation under such a law, and that experience alone will serve to point out what may be the actual deficiencies of the bill.

Except in a few respects, this is not a measure conferring administrative powers, but is one laying down definitions and stating limitations. These definitions and limitations must, to be sure, be interpreted and applied by agencies affected by them, in the first instance. But the enforcement of the bill by the independent judicial interpretation and application of its terms is a function which, in the final analysis, is clearly conferred upon the courts.

Therefore, it will be the duty of reviewing courts to prevent avoidance of the requirements of the bill by any manner or form of indirection, and to determine the meaning of the words and phrases used, insofar as they have not been defined in the bill itself. For example, in several provisions of the bill, the expression "good cause" is used. The cause so specified must be interpreted by the context of the provision in which it is found, and the purpose of the entire section and bill. The cause found must be real and demonstrable. If the agency is proceeding upon a statutory hearing and record the cause will appear there; otherwise, it must be such that the agency may show the facts and considerations warranting the finding in any

proceeding in which the finding is challenged. The same would be true in the case of findings other than of good cause, required in the bill. As I have said, these findings must, in the first instance be made by the agency concerned; but, in the final analysis, their propriety in law, and on the facts, must be sustainable upon inquiry by a reviewing court.

Nevertheless, Mr. President, it must be obvious that for most practical purposes the Congress and the people must look to the agencies themselves for fair administration of the laws and for compliance with this bill. Judicial review is of utmost importance, but it can be operative in relatively few cases because of the cost and general hazards of litigation. It is indispensable, since its mere existence generally precludes the arbitrary exercise of powers, or the assumption of powers not granted. Yet, in the vast majority of cases, the agency concerned usually speaks the first and last word. For that reason, the agencies must make the first, primary, and most far-reaching effort to comply with the terms and the spirit of this bill.

The committee does not consider this bill as an indictment of administrative agencies or administrative processes. The committee takes no position one way or the other on those questions. By enacting this bill, the Congress—expressing the will of the people—will be laying down for the guidance of all branches of the Government, and all private interests in the country, a policy respecting the minimum requirements of fair administrative procedure.

Mr. President, I present this bill to the Senate of the United States in the firm belief that the Judiciary Committee of the Senate has accomplished something of great value to the people of the United States.

Mr. AUSTIN. Mr. President, I do not wish to weary the Senator by interruptions.

Mr. McCARRAN. Not at all; that is quite all right.

Mr. AUSTIN. But if he will permit one more question—

Mr. McCARRAN. Yes; indeed.

Mr. AUSTIN. What has been provided in the bill with respect to the separation of the powers of prosecution and judgment? In other words, how does the bill devise a plan by which the same man shall not be both prosecutor and judge?

Mr. McCARRAN. Section 11 of the bill provides very specific machinery for independent examiners. We have provided by what method they shall be selected and that they shall be independent, and we have further provided that they shall make the initial findings when they sit as examiners. That is the method which separates the prosecutor from the judicial officer, and so forth.

Mr. President, I now lay the bill before the Senate with the hope that it may be approved and passed.

Mr. FERGUSON obtained the floor.

Mr. JOHNSON of Colorado. Mr. President—

Mr. FERGUSON. Does the Senator from Colorado wish to have me yield to him?

Mr. JOHNSON of Colorado. I wish to place in the RECORD at this point a statement in regard to the bill.

Mr. FERGUSON. I yield.

Mr. JOHNSON of Colorado. I ask unanimous consent to have printed at this point in the RECORD a discussion of the proposed Administrative Procedure Act. The discussion or address is by Mr. Allen Moore, who is a prominent member of the Colorado bar.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

[From the January 1945 issue of Dicta, official publication of the Denver and Colorado Bar Associations]

THE PROPOSED ADMINISTRATIVE PROCEDURE ACT (By Allen Moore)

The proposed Federal Administrative Procedure Act, sponsored by the American Bar Association and drafted by its special committee on administrative law, has been said to provide the most fertile ground for statesmanship in the field of the administration of justice since the Judiciary Act of 1789. This view seems not only to be a bit of over-emphasis but it is quite in line with the approach of the American Bar Association toward the growth of administrative law in the past 10 or 12 years, during which repeated efforts have been made to obtain legislation, such as the Walter-Logan bill, which, if enacted, might easily have thwarted a necessary and inevitable development of the administrative process.

The bill under consideration here is entitled "A bill to improve the administration of justice by prescribing fair administrative procedure," and was recently introduced in the Senate by Senator McCARRAN, of Nevada, and in the House by Congressman SUMNERS, of Texas.

The bill marks the culmination of more than 5 years of continuous study and drafting by the special committee on administrative law and by the association itself following the veto by the President of the Walter-Logan bill, the association's first effort to secure such legislation.

The bill is also said to mark the commencement of a new responsibility upon association members and lawyers generally to promote the enactment of the measure.

This paper is an attempt to evaluate the merits of the proposed act for the members of the Colorado Bar Association at this, its annual meeting, in order that they may be more fully advised and in a better position to make an intelligent determination when the association considers a resolution to approve the bill and urge its enactment, and thereby, as individual members, responding to President Henderson's appeal to "constitute yourself a committee of one to do what you can to aid in securing favorable consideration of the association's immediate objective—the improvement of the administration of justice through the adoption of a statutory framework of fair administrative procedure."

It is indeed a grave responsibility which confronts the bar associations and the lawyers of this country. We should make certain that the proposed act would actually improve the administration of justice and that it truly prescribes fair administrative procedure. We should be certain that the public interest and welfare will properly be protected; that the act will not impede the normal development of administrative law, and that it is not an effort to emasculate the growth of new instrumentalities designed to meet the will of the people in a rapidly expanding society in periods of stress and strain.

These points are raised because frequently in recent years advocates of this type of

legislation have used, somewhat carelessly, clichés such as "administrative absolutism," "bureaucracy," "dictatorship," "the issue here is constitutional government versus bureaucratic dictatorship," "the new despotism," this "wonderland of bureaucracy," this "pattern for tyranny."

Now, what is this thing which has so frightened members of the Congress, bar associations, lawyers, the press and some of the general public? What is this thing which brings about such violent attacks? Are the very foundations of our Government being undermined? Are such fears well-founded? I think not. "Administrative law," "the administrative process," "administrative tribunals" do not appear so sinister if one understands something of the origins, developments, and characteristics of the administrative process and its proper evaluation in our scheme of government.

It therefore seems appropriate before giving a synopsis of the proposed administrative Procedure Act to give something of the background of administrative law in this country, as well as to trace the steps leading to the introduction of the McCarran-Sumners bill.

James M. Landis in the Storrs Lectures given at Yale University in 1936, later published in book form as *The Administrative Process*, says in the introduction:

"The last century has witnessed the rise of a new instrument of government, the administrative tribunal. In its mature form it is difficult to find its parallels in our earlier political history; its development seems indigenous. The rapidity of its growth, the significance of its powers, and the implications of its being are such as to require notice of the extent to which this new 'administrative law' is weaving itself more and more into our governmental fabric.

"In terms of political theory, the administrative process springs from the inadequacy of a simple tri-partite form of government to deal with modern problems. It represents a striving to adapt governmental technique that still divides under three rubrics to modern needs and, at the same time, to preserve those elements of responsibility and those conditions of balance that have distinguished Anglo-American government."

Landis here refers to the doctrine of separation of powers, an old political maxim, based upon the division of governmental powers in the federal and state constitutions into the legislative, executive, and judicial. This tripartite ideal of government, and the checks and balances to be found in our constitutions have resulted in fineness of logic-chopping by our courts, to uphold the separation of powers, and for a tendency on their part to establish new categories of quasi-legislative and quasi-judicial powers when they find an executive agency infringing on the powers of either of the other branches of government.

Dean Landis then states:

"The insistence upon the compartmentalization of power along triadic lines gave way in the nineteenth century to the exigencies of governance. Without too much political theory but with a keen sense of the practicalities of the situation, agencies were created whose functions embraced the three aspects of government. Rule making, enforcement, and the disposition of competing claims made by contending parties were all intrusted to them. As the years passed, the process grew. These agencies, tribunals, and rule-making boards were for the sake of convenience distinguished from the existing governmental bureaucracies by terming them 'administrative.' The law the courts permitted them to make was named 'administrative law,' so that now the process in all its component parts can be appropriately termed the 'administrative process.'"

The term "administrative law" thus came into general use and the administrative process has resulted in a voluminous literature

and the inclusion of courses in administrative law in most of the law schools.

Since the administrative process deals with the relationships of governmental agencies to persons it has necessarily been associated with the term "bureaucracy." From bureaucracy to autocracy to dictatorship is a simple transition in some people's thinking. The literature of the subject abounds with fulminations. It treats the administrative process as if it were an antonym of that supposedly immemorial and sacred right of every Englishman, and every American, the legal palladium of the rule of law. The process is denounced by worthy lawyers, legislators, bar associations, and politicians as heralding the death knell of ancient liberties and privileges. The independent administrative agencies of the Federal Government have been said to constitute "a headless fourth branch" of the Government, a haphazard deposit of irresponsible agencies and uncoordinated powers whose institution did "violence to the basic theory of the American Constitution that there should be three major branches of the Government, and only three."

Such glorification of the doctrine of the separation of powers obscures rather than clarifies thought. In spite of this chorus of abuse and tirade, the growth of the administrative process shows or will show little signs of being halted.

The administrative process in the Federal Government is not new. On the contrary it is as old as the Government itself, and its growth has been virtually as steady as that of the statutes at large. The growth has been pragmatic. Congress has passed laws and has resorted to the administrative device in the framing of the laws and in the practical effort to meet particular needs.

The 9 executive departments and the 18 or more independent agencies are examples of administrative agencies, but so also are the many subdivisions of departments termed "bureaus," "offices," "administrations," "services" and the like, which have a substantial measure of independence in the department's internal organization and in the conduct of their adjudicative or rule-making activities. At the time of the Attorney General's committee report, there were 51 administrative agencies of the type which were deemed to be parts of the administrative process. The war has added to that number about 25 more, making a total of about 75 strictly administrative agencies. There are, of course, other agencies which do not have rule-making or adjudicatory powers.

Since the administrative process has developed in this fashion and without a definite plan, it invites comprehensive study with a view to coordination and improvement and not blind repeal or emasculating and unthinking legislation. It should be understood that the administrative process has deep roots in American history and it should be recognized that it embodies the practical judgments of successive Congresses and Presidents, and of the people. It is no socialistic, foreign ideology, plotted by the so-called palace guard for the purpose of substituting a government of men for a government by law. It should be and can be improved and developed into an ever-increasing instrumentality for efficient government in an increasingly complex society where government is certain to be charged with more and more functions, which in a simple, economic society of earlier days were either nonexistent or could easily enough be left to the ordinary legislative, executive, or judicial processes.

The American Bar Association has for many years been preparing itself for leadership in undertaking to effectuate more adequate legislative and judicial guidance or control of the development of administrative law. Through its special committee on administrative law, first established in 1933 and continued annually to this time, it had

made many studies and reports to the association.

In recent years the first substantial recommendation of the special committee on administrative law was the establishment of a Federal administrative court. That effort proved abortive. It was succeeded by the legislative proposal known generally as the Walter-Logan bill, which was sponsored by Congress and vetoed by the President. Shortly thereafter the Attorney General's Committee on Administrative Procedure made its final report, including legislative recommendations by both a majority and a minority of that committee.

The American Bar Association did not adopt either of those measures as its choice, nor did it continue its backing of the Walter-Logan bill; instead, it adopted a declaration of principles which it felt should be included in any adequate Federal legislation and declared that, of the existing proposal's that of the minority of the Attorney General's committee more nearly met the principles so declared.

Thereafter a subcommittee of the Senate Judiciary Committee held extensive hearings on the proposals growing out of the Attorney General's committee hearings, but suspended consideration in the summer of 1941 because of the imminence of war and the then declared national emergency. Accordingly, for the next year and a half the special committee on administrative law devoted its energies to the development of the conference on administrative law and other matter covered in its annual reports.

The house of delegates of the association, on August 26, 1943, adopted recommendations authorizing the special committee on administrative law (1) to draft a bill respecting the basic problems and requisites of fair administrative procedure, and (2) upon the approval of such a bill (a) to publicize it and take all necessary steps to secure its consideration and adoption, and (b) to make special recommendations to congressional committees with reference to legislative action in connection with specific administrative agencies or powers as may arise.

A first draft of such general Federal legislation accompanied the 1943 report of the committee. A second tentative draft was printed in 30 A. B. A. Journal 7, January 1944. A further amendment of this draft was presented to and approved by the house of delegates February 28, 1944, and was printed in 30 A. B. A. Journal 226, April 1944, and as stated earlier was introduced in the Senate by Senator McCARRAN as S. 2030 and in the House by Mr. SUMNERS as H. R. 5081, Seventy-eighth Congress, second session.

With this perhaps overlong introduction and background material in mind, I shall now proceed to discuss the purposes, scope, and effect of the bill if enacted and to give an analysis or synopsis of its principal features with comments interspersed as to what I consider to be its good and bad points.

The McCarran-Sumners bill is designed primarily to secure publicity of administrative law and procedure, to require that administrative hearings and decisions shall be conducted in such manner as to preclude the secret reception of evidence or argument, to restate but not expand the right of and procedures for judicial review, and to foster the foregoing by requiring an intra-agency segregation of deciding and prosecuting functions and personnel. No attempt is made to require formal administrative hearings where the law under which the agency operates has not so required. No attempt is made to limit existing administrative authority. Agencies are simply confined to the scope of their authority.

The proposed act is said by its drafters to be designed to achieve four essential and simple purposes:

"(1) It requires administrative agencies to publish their organizations and proce-

dures, and to make available to public inspection their orders and releases.

"(2) As to rule making, it requires that agencies publish notice and at least permit interested parties to submit views or data for consideration.

"(3) As to adjudication, it provides that, in the absence of agreement through informal methods, agencies must accord the parties notice, hearing, and decision before responsible officers, with provision for the segregation of deciding and prosecuting functions.

"(4) As to judicial review, it provides forms of review actions for the determination of all questions of law in all matters not expressly committed to executive discretion."

The short title of the act is given as the "Administrative Procedure Act."

Section 1 defines the terms "agency," "rule," "rule making," "adjudication," and "order." The bill is concerned primarily with administrative agencies; that is, the Congress, the courts, the governments of the possessions, the territories, and the District of Columbia are excluded, and to judicial review of their regulatory actions. It applies to functions rather than enumerated agencies and deals comprehensively with:

(1) The issuance of "rules," by which is meant the written statement of any regulation, standard, policy, interpretation, procedure, requirement, or other writing issued or utilized by any agency, of general applicability and designed to implement, interpret, or state the law or policy administered by, or the organization and procedure of any agency; and "rule making" is the administrative procedure for the formulating of a rule, and

(2) the adjudication of particular cases, meaning the administrative procedure of any agency, and

(3) the issuance of orders by which is meant its disposition or judgment, whether or not affirmative, negative, or declaratory in form, in a particular issuance other than rule making and without distinction between licensing and other forms of administrative action or authority.

These terms include the three typical administrative functions which bear upon private rights and parties.

The bill is further limited in scope since war agencies and functions are excluded in toto, except as to the requirements in section 2 that they publish their procedures and make their orders available for public inspection (sec. 1), which in turn is not mandatory as to military, naval, or diplomatic functions (sec. 2).

No fault is found with respect to the definition section, since the terms "agency," "rule," "rule making," and "order" are essentially those included in the Federal Reports Act of 1942, the Federal Register Act, and the Federal Register Regulations, in which the essential language is "general applicability and legal effect." It is predicted, however, that many, if not most, old-line agencies, such as the Interstate Commerce Commission and the Federal Trade Commission, will be excluded from the scope of the act before final passage, and that its terms will be limited to the newer agencies as was done in the Walter-Logan bill.

Section 2 of the act is headed "Public information" and requires, except as to military, naval, or diplomatic functions of the United States requiring secrecy in the public interest, the publication concurrently of all rules concerning the organization of the agency, substantive regulations, statements of general policy and all procedures; the preservation and publication, or the making available to public inspection of all rulings on questions of law, and all opinions rendered or orders issued in the course of adjudications, and the filing of releases with the Division of the Federal Register. To these provisions are added certain substantive prohibitions regarding the issuance of pub-

licity reflecting adversely upon any person, product, commodity, security, private activity, or enterprise otherwise than by issuance of the full texts of authorized public documents, impartial summaries of the positions of all parties to any controversy, or the issuance of legal notice of public proceedings within its jurisdiction. These obscure substantive provisions appear to have no proper place in a procedural act. In many instances pitiless publicity is a useful device. These last-mentioned provisions would be most difficult to administer. There is, of course, no objection to giving the public all possible information through publication, inspection, and filing.

Section 3 is an important section on rule making, one of the major functions of administrative agencies. The first subsection (a) on notice requires every agency to publish general notice of proposed rule making including (1) a statement of the time, place, and nature of any public rule-making procedures, (2) reference to the authority under which the rule is proposed, and (3) a description of the subject and issues involved. This requirement does not apply to cases in which the agency is authorized by law to issue rules without a hearing and notice is impracticable because of unavoidable lack of time or other emergency. The subsection applies only to substantive rules, and is not mandatory as to interpretive rules, general statements of policy, or rules of agency organization or administrative procedure.

The second subsection (b) provides procedures affording interested parties an adequate opportunity to participate in rule making through (1) submission of written data or views, (2) attendance at conferences or consultations, or (3) presentation of facts or argument at informal hearings. This subsection applies only to the type of rules for which notice is required by the first subsection. Where a law specifically requires that rules be issued only upon a formal hearing, separate procedures are set forth in sections 6 and 7. Public participation in the rule-making process does not appear to be necessary or desirable to the extent provided in this subsection. It would prove costly, time consuming and would impede the efficiency and effectiveness of the agency.

The third subsection (c) provides that every agency authorized to issue rules shall afford any interested person the right to petition for the issuance, amendment, or rescission of any rule. Few agencies have regular procedures whereby private parties may petition with respect to rules. Both the majority and the minority of the Attorney General's committee proposed that such a provision be included in legislation.

Section 4 of the proposed act covers the subject of "adjudication" and provides that in every case of administrative adjudication in which the rights, duties, obligations, privileges, benefits, or other legal relations of any person are required to be determined only after opportunity for an administrative hearing (except to the extent that there is directly involved any matter subject to a subsequent trial of the law and facts de novo in any court notice shall be given [subsec. (a)]).

The introductory double exception to the section removes from the operations of sections 4, 6, and 7 all administrative procedures in which the law concerned does not require rules or orders to be made upon a hearing and all matters subject to a subsequent trial de novo in any court.

Of the two introductory exceptions, that limiting the adjudication procedure to those cases in which statutes require a hearing is the more significant, because thereby are excluded the great mass of administrative routine as well as pensions, claims, and a variety of similar matters in which Congress has intentionally or traditionally refrained from requiring an administrative hearing.

The second exception rules out such matters as the tax function of the Bureau of Internal Revenue (which are triable de novo in The Tax Court), the administration of the custom laws (triable de novo in the customs courts), the work of the Patent Office (since judicial proceedings may be brought to try out the right to a patent), and subjects which might lead to claims determinable subsequently in the Court of Claims. The second exception also exempts administrative reparation orders assessing damages, such as are issued by the Interstate Commerce Commission and the Secretary of Agriculture, since such orders are subject to trial de novo in court upon attempted enforcement.

Subsection (a) of section 4 provides that the agency shall give due and adequate notice in writing specifying (1) the time, place, and nature of the proceedings, (2) the precise legal authority and jurisdiction, and (3) the matters of fact and law in issue. Adequate notice is certainly a prerequisite to a fair hearing. Room remains for considerable improvement in the notice practice of many agencies. A provision is included which provides that the statement of issues of fact in the words of the statutes shall not be compliance with the notice requirement.

Subsection (b) provides that in every case after the notice required by subsection (a) is given, the agency shall afford all interested parties the right and benefit of fair procedure for the settlement or adjudication of all relevant issues through (1) opportunity for informal submission and full consideration of facts, claims, arguments, offers of settlement, or proposals of adjustment, and (2) thereafter, to the extent that the parties are unable to determine any controversy by consent, formal hearing and decision in conformity with sections 6 and 7. Two lengthy provisions concerning cases resting upon physical inspection or test, permitting reinspection and retest and providing for summary action in certain cases, all included. Some agencies either neglect or preclude informal procedures, although now even courts through pretrial proceedings dispose of much of their business in that way. There is even more reason to do so in the administrative process, for "informal procedures constitute the great bulk of administrative adjudication and are truly the lifeblood of the administrative process." Insofar as possible, cases should be disposed of through conferences, agreements, or stipulations, hence the inclusion of such informal methods in the act, and their application to inspections and summary proceedings, will strengthen the administrative arm and serve well the interests of private parties.

Subsection (c) provides for declaratory rulings upon petition of any proper party in order to terminate a controversy or to remove uncertainty as to the validity or application of any administrative authority, rule or order with the same effect and subject to the same judicial review as in the case of other rules, or orders of the agency. The administrative process has been slow to adopt declaratory judgment procedures, although courts, particularly State courts, have long recognized the validity of such procedures. The Attorney General's committee strongly recommended that declaratory rulings be made a part of the administrative process and subject to judicial review.

Section 5 of the bill concerns certain ancillary matters in connection with any administrative rule making, adjudication, investigation, or other proceeding or authority, such as appearance, the conduct of investigations, subpoenas and denials.

Subsection (a) of the section recognizes the right of parties to appear before administrative agencies, in person, or by counsel, and be accorded opportunities and facilities for the negotiation, information, adjustment, or formal or informal settlement of any case. A provision recognizes that, in the administrative process, the right to counsel

shall be accorded as of right just recognized by the Bill of Rights in connection with judicial process, and as proposed by both majority and minority of the Attorney General's committee. A second provision is designed to do what is possible to remedy delays in the administrative process, since "expedition in the disposition of cases is commonly a major objective of the administrative process." It relieves the private parties from consequences of unwarranted or avoidable administrative delay, provides that cases shall be promptly set and determined, and makes essential provisions for cases in which licenses are required by law but administrative agencies fail to act. In such cases the licenses are deemed granted after 60 days.

Subsection (b) relates to the conduct of investigations, stating that they shall be confined to the jurisdiction and purposes of the agency to which the authority is delegated.

Subsection (c) relating to subpoenas is designed (1) to assure that private parties as well as agencies shall have a right to such subpoenas, (2) limit the showing required of private parties so that they may not be required to disclose their entire case for the benefit of agency personnel, and (3) recognize that a private party may contest the validity of an administrative subpoena issued against him prior to incurring penalties for disobedience, since otherwise parties may in effect be deprived of all opportunity to contest the search or seizure involved. The haphazard and often unfair methods of issuance of administrative subpoenas were recognized in the final report of the Attorney General's committee.

Subsection (d) provides that every agency shall give prompt notice of denials accompanied by the grounds for such denial and any further administrative procedures available.

No exception is taken to any of the ancillary matters included in section 5.

Sections 6 and 7 of the bill are of the greatest importance, since they provide the essential procedures thought to constitute a full and fair hearing and proper decisions or findings thereafter.

Section 6 on "Hearings" states that no administrative procedure shall satisfy the requirement of a full hearing unless (subsec. (a)) the case shall be heard (1) by the ultimate authority of the agency or (2) by one or more subordinate hearing officers designated by the agency from members of the board or body which comprises the highest authority therein, State representatives authorized by law to preside at the taking of evidence or examiners appointed subject to the civil service or other laws, at salaries ranging from \$3,000 to \$9,000. Numerous provisions are inserted respecting the functions of such presiding officers.

In subsection (b) presiding officers are given power to (1) administer oaths and affirmations, (2) issue subpoenas, (3) rule upon offers of proof and receive evidence, (4) take or cause depositions to be taken, (5) regulate the course of hearings and the conduct of the parties, (6) hold informal conferences, (7) dispose of motions, etc., and (8) make or participate in decisions in conformity with section 7.

Subsection (c) relates to evidence. The principles of relevancy, materiality, probative force, and substantiality as recognized in judicial proceedings of an equitable nature shall govern the proof, decision, and administrative or judicial review of all questions of fact. Thus it appears that no attempt is made to require the application of the so-called common law or jury trial rules of evidence in administrative hearings. This is proper. It is in line with basic principles of evidence followed among administrative agencies. This subsection contains other pertinent provisions regarding burden of proof, the rights of cross-examination and

rebuttal, admission of written evidence, official notice, and a declaration that no sanction, permission, or benefit shall be imposed or granted, or permission or benefit withheld except upon evidence which on the whole record is competent, credible, and substantial.

Subsection (d) enumerates the materials which shall constitute the record and provides that it shall be available to all parties.

Section 7 contains provisions relating to decisions for the initial submission of briefs, proposed findings and conclusions, and oral argument for consideration in preparing an initial decision, or where subordinate officers preside, an intermediate report, the details of such report or decision, provisions for administrative review, the consideration of cases, the findings and opinions and the service thereof upon all the parties.

The provisions of these two sections on fair hearings and findings or decisions should serve to meet most of the heated criticisms heretofore directed against administrative agencies in the conduct of hearings. Most well-run agencies have already provided for such procedures.

Section 8 relates to penalties and benefits. The first subsection (a) prohibits the imposition of extra-legal sanctions. Rules may not enlarge such authority [subsec. (b)], nor may orders do so [subsec. (c)]. Subsection (d) prohibits the imposition of burdens in issuing licenses except as provided by law, or the withdrawal of licenses except in cases of willfulness or stated cases of urgency, without warning notices giving an opportunity for the correction of conduct questioned by the agency.

Subsection (e) is designed to place limitations upon the retroactive operation of rules or orders whether such operation is designed as a penalty or for cause. These provisions seem proper and wise.

Section 9 treats of judicial review and constitutes the longest, most involved and most controversial features of the proposed act. Chapter VI of the final report of the Attorney General's committee gives an extensive analysis of this important but technical subject from the viewpoint of the majority of the committee. It concludes that dissatisfaction with the existing standards as to the scope of judicial review derives largely from dissatisfaction with the fact-finding procedures employed by the administrative bodies, that is, whether or not such action inspires confidence, and assumes that if the notice, hearings, and finding procedures are adopted as recommended they will obviate the reasons for change in the area and scope of judicial review.

However, the minority of the committee, Messrs. McFarland, Stason, and Vanderbilt, was of the contrary opinion and thought that Congress should provide by general legislation for both the availability and scope of judicial review. It therefore included in its proposed bill a quite elaborate section on judicial review. In successive drafts, and in the proposed act here under discussion, the judicial review section became increasingly elaborate and involved until it either means nothing at all or else its adoption would result in seriously crippling the administrative process and impose upon the courts a hopeless burden and thus substitute the judicial for the administrative process.

With this background, I shall attempt as briefly as possible to describe the contents of section 9 on judicial review.

There is an introductory limitation by which there is excluded any matter subject to a subsequent trial de novo or judicial review in any legislative court such as the Customs Court, the Court of Customs and Patent Appeals, The Tax Court, or the Court of Claims.

Subsection (a) provides that any party adversely affected by any administrative action, rule, or order within the purview of the act or otherwise presenting any issue of law

shall be entitled to judicial review thereof in accordance with this section, and reviewing courts are given plenary power with respect thereto. I shall not attempt here to make crystal clear what "an issue of law" is as distinguished from "an issue of fact" or a mixed issue of law and fact. I suspect the courts will wrestle with that problem for a long, long time.

Subsection (b) states the types of available review proceedings that are statutory and nonstatutory and enumerates declaratory judgments as one such type. A further provision authorizes an action for review against the agency by its official title as well as the head officer or officers, or any of them.

Subsection (c) relates to courts and venue, and contains provisions as to the transfer of review proceedings, amendment thereof, and general provisions to assure that the rights of parties will not be defeated by complicated court and venue provisions of law defects pointed out by the Attorney General's committee.

Subsection (d) on reviewable acts states that any rule shall be reviewable upon its judicial or administrative application or threatened application, and, whether or not declaratory or negative in form or substance, except those matters expressly committed by law to absolute executive discretion. Only final actions, rules, or orders, or those for which there is no other adequate judicial remedy are reviewable; in other words, a recognition of the principle of the exhaustion of administrative remedies.

Subsection (e) deals with interim relief, such as stay orders, in elaborate fashion.

Subsection (f), on scope of review, is the heart of section 9. The drafting committee states this subsection does not attempt to expand the scope of judicial review, nor reduce it directly by implication. "Nor is it possible to specify all instances in which judicial review may operate. Subsection (f), therefore, seeks merely to restate the several categories of questions of law subject to judicial review."

The essential words are directly quoted:

"Upon such review, the court shall hold unlawful such act or set aside such application, rule, order, or any administrative finding or conclusion made, sanction or requirement imposed, or permission or benefit withheld to the extent that it finds them (1) arbitrary or capricious; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory authority, jurisdiction, or limitations or short of statutory right, grant, privilege, or benefit; (4) made or issued without due observance of procedures required by law; (5) unsupported by competent, material, and substantial evidence, upon the whole record as reviewed by the court, in any case in which the action, rule, or order is required by statute to be taken, made or issued after administrative hearing, or (6) unwarranted by the facts to the extent that the facts in any case are subject to trial de novo by the reviewing court."

Every clause, phrase and word of this quotation deserves extensive and intensive study to determine its true significance. What its effect would be in actual operation no one can say. As a whole I am of the opinion that this subsection goes entirely too far, is dangerous and would result in an impossible substitution of the judicial for the administrative process and thus deprive our jurisprudence of that process or else delay its proper and normal development. This subsection constitutes a bold and ambitious effort on the part of the critics of administrative law to kill it or nullify it before it has had an opportunity to prove its true worth. Similarly, conservative common law judges and lawyers have fought the development of equity and most every other judicial reform.

Subsection (g) provides that judgments of original courts of review shall be appealable in accordance with equity law and in the absence thereof, by the Supreme Court upon writs of certiorari.

Subsection (b) recognizes that all other provisions of law relating to judicial review shall remain in effect unless inconsistent with section 9, except where Congress has forbidden it or broadened it.

Section 10 relates to separations of functions so as to achieve an internal segregation of deciding and prosecuting personnel. The minority of the Attorney General's committee thought that there should be a complete separation of functions, that is that hearings should be held and decisions made by an administrative tribunal separate from the agency engaged in investigations and prosecutions or by a court. The majority of the committee thought this unnecessary and undesirable, holding that the problem is simply one of isolating those who engage in the adjudicative activity. This section follows quite closely the view of the majority rather than of the minority.

Section 11, the concluding section of the proposed act, includes the usual provisions respecting the construction and effect of the act and certain other technical matters.

The proposed administrative act represents one of three conflicting doctrines of public administration now struggling for domination of the Federal Government. Blachley and Oatman in Federal Regulatory Action and Control have called these three doctrines (1) the doctrine of executive management; (2) the doctrine of the judicial formula; (3) the revisionist doctrine.

The essential feature of the doctrine of executive management is the assertion that all administrative activities of the Federal Government (except those of a quasi judicial nature) should be under the control of the Chief Executive.

Those who advocate the doctrine of the judicial formula would require the administrative process to act insofar as possible, according to the judicial formula of notice and hearing followed by a decision, and would subject to judicial review practically every act which would even remotely affect personal and property rights.

The revisionist doctrine sees in the present Federal administrative system a fairly satisfactory adaptation of structure and relationship to function. At the same time it advocates improvement.

There are many objections to the first doctrine which need not be developed here.

The doctrine of the judicial formula of public administration is largely the product of the special committee of the American Bar Association, the activities of which have been mentioned herein. The chief criticism of the present system offered by it and the association may be expressed in two words, "administrative absolutism." The proposals of the committee at various stages have been embodied in bills which have been mentioned and in the proposed administrative act just described and commented upon. In my opinion the doctrine of the judicial formula as embodied in the act is wrong in its fundamental objectives. Although some of the doubtful features from a constitutional standpoint and some of the most rash departures of earlier bills have been eliminated in the proposed act, yet its animating purpose, the desire to subject every possible disagreement between the individual and the administrative agency to complete control by the courts, is opposed to the inevitable, necessary, and useful evolution of administrative procedures and administrative and judicial controls that have been a notable feature of the Federal Government during more than a half century.

The theory is based on the moribund concept that law cannot prevail or justice be

done except through the courts. It fails to accord to the administrative process the degree of power and finality which the courts themselves, applying the laws under the Constitution of the United States, have recognized as belonging to that process. It looks backward and tries to revive the very system of judicial regulation of business and industry which proved so impossible as to lead to the establishment of regulatory agencies. It destroys and is not constructive. It offers no real protection to the citizen but does menace effective administration. It rests upon dead theory instead of evolving reality. The doctrine of the judicial formula should be discarded and rejected. It appears that the "tendencies toward administrative absolutism," so feared by certain advocates of the proposed act and its predecessors, are largely nonexistent.

The revisionist doctrine, on the other hand, sees in the present system of Federal administration a vast complex of organizations performing a multitude of functions, employing a wide variety of methods and procedures, and subjected to numerous types of control, carried on within a constitutional framework, based on individual rights, adequately protected. The administrative process has developed step by step to meet everyday needs. Changes which are necessary should be made to improve it and should not be designed to destroy it. It was with this idea in mind that the Attorney General's committee was appointed in 1939 and carried on its painstaking research for 2 years or more. Its final report is an imperative for one who would be fully informed of the issues involved here.

The majority of the committee recommended (1) the establishment of an Office of Administrative Procedure under a director with an advisory committee; (2) the publication of rules and other information, and certain safeguards with respect to rule making; (3) administrative adjudication through a system of independent intra-agency hearing commissioners such as is now in use in the OPA; and (4) the power to issue declaratory rulings. Specific recommendations were made concerning individual agencies, many of which recommendations have been adopted. It made no suggestions for judicial review. It summarily rejected the idea of the minority of the committee that it was feasible to draft a code of standards of fair administrative procedure, although such a code was included in the final report, and, as I have indicated, the proposed act is its present form.

Progress in the administrative process can be made (1) by maintaining the independence of regulatory agencies; (2) by further developing administrative rule making and adjudication; (3) by more exact differentiation of the various forms of administrative action; and (4) by simplifying administrative judicial procedure, and, where possible, by making it more uniform.

These things will leave the administrative system intact, will add to its strength and stability, and will broaden and develop it to meet the expanding needs of a living democratic society. The adoption of the proposed act would have quite the opposite effect.

Mr. FERGUSON. Mr. President, I wish to say a few words regarding this bill. I am of the opinion that it is worthy of passage by the Senate and should become the law.

This bill seeks to lay down rules and regulations for administrative agencies. During the course of the years there has been great growth of such agencies. Any lawyer who has practiced before them has found on numerous occasions that the officer charged with the responsibility of rendering a decision has acted in a way contrary to the ideas and ideals

of the bar and of the ancient procedures by which we, as members of the bar, were able to get, as we believed, equal justice under law.

While I do not think anyone can say that this is such a bill as he himself would draft, or that in every instance it contains language such as he himself would employ, nevertheless I think it is a bill which is worthy of passage. It is a very good start. I know that when the bill came before the Judiciary Committee, of which I am a member, I sent copies of it to members of the bar, as did other members of the committee. We found probably a greater degree of satisfaction regarding this bill than has been evidenced in regard to the great mass of legislation which is passed by the Senate.

Recently I conferred about the bill with Dean Stason, of the University of Michigan Law School, who has taught administrative law. After a study of this bill he believes it to be a great step forward. I wholeheartedly agree with him. I think this bill lays down certain rules and regulations which will be beneficial to the people of America, and that before the bar of public opinion administrative decisions will be accepted with a greater degree of satisfaction than has prevailed in the past. In my opinion, there will be fewer complaints because of the activities of governmental agencies if they will attempt to live within the rules and regulations laid down by Congress. After all, the Congress is the policy-making body of the United States. In this measure we are simply laying down a policy; we are trying to provide rules and regulations which in our opinion will be for the benefit of the people of America and will result in a greater assurance of justice at the hands of administrative agencies. I hope the bill will be passed.

Mr. WILEY. Mr. President, I wish to join in the praise and compliments which have already been bestowed upon the Senator from Nevada, the distinguished chairman of the Judiciary Committee, and his staff. They have done a tremendous job in relation to this bill.

There is no question about the need which the bill is designed to fill and which has become apparent, I believe, to every lawyer who has transacted business before agencies and departments of the Government. In recent years, because of governmental bureaucratic controls, the need has also become very apparent to the laity. As a result, as the chairman has stated, a number of committees had investigated the subject and submitted reports.

Mr. President, I was particularly interested in the report on administrative management of the President's committee which was made in 1937. That report, in part, is set forth in the report of the Committee on the Judiciary on the pending bill. I desire to read briefly from it. It very aptly brings to mind the tendency in republics to what might be called barnacle growth such as that found on the hulls of ships. Unless we are alert, barnacle growth will endanger us, and the ship of state will become fouled, so to speak, and our institutions

will become endangered. Here is the language to which I refer:

The executive branch of the Government of the United States has * * * grown up without plan or design * * *. To look at it now, no one would ever recognize the structure which the founding fathers erected a century and a half ago. * * * Commissions have been the result of legislative groping rather than the pursuit of a consistent policy. * * * They are in reality miniature independent governments set up to deal with the railroad problem, the banking problem, or the radio problem. They constitute a headless "fourth branch" of the Government, a haphazard deposit of irresponsible agencies and uncoordinated powers.

I do not believe I have overemphasized the situation by my use of the term "barnacle growth":

There is a conflict of principle involved in their make-up and functions. * * * They are vested with duties of administration * * * and at the same time they are given important judicial work. * * * The evils resulting from this confusion of principles are insidious and far reaching. * * * Pressures and influences properly enough directed toward officers responsible for formulating and administering policy constitute an unwholesome atmosphere in which to adjudicate private rights. But the mixed duties of the commissions render escape from these subversive influences impossible. Furthermore, the same men are obliged to serve both as prosecutors and as judges. This not only undermines judicial fairness; it weakens public confidence in that fairness. Commission decisions affecting private rights and conduct lie under the suspicion of being rationalizations of the preliminary findings which the Commission, in the role of prosecutor, presented to itself.

Mr. President, that statement is from the report of the President's Committee in 1937. If there were ever definite language which set forth an undesirable situation and the necessity for providing a remedy, it is the language which I have read.

So again, Mr. President, I compliment the chairman of the committee for what he has accomplished. Even after this bill becomes law, it will not be the final answer. What we are saying to these agencies is, "Get busy, formulate your rules, prescribe the pattern, and make it uniform so that those who desire to practice before you will be fully informed as to what is necessary in connection with the practice." After we have done that, we will take another step next year and say, which we should say, that the practice in all these agencies should be uniform in order that they may not adopt their own rules and prescribe certain pleadings, or whatever they may be called, which may differ from each other. When we have, in due course, a uniform practice laid down and followed by uniform pleadings, we will have accomplished what I am sure was envisioned by those who drew this bill.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The committee amendment was to strike out all after the enacting clause and in lieu thereof to insert:

That this act may be cited as the "Administrative Procedure Act."

DEFINITIONS

SEC. 2. As used in this act—

(a) Agency: "Agency" means each authority (whether or not within or subject to review by another agency) of the Government of the United States other than Congress, the courts, or the governments of the possessions, Territories, or the District of Columbia.

Nothing in this act shall be construed to repeal delegations of authority as provided by law. Except as to the requirements of section 3, there shall be excluded from the operation of this act (1) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them, (2) courts martial and military commissions, (3) military or naval authority exercised in the field in time of war or in occupied territory, or (4) functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947, and the functions conferred by the following statutes: Selective Training and Service Act of 1940; Contract Settlement Act of 1944; Surplus Property Act of 1944.

(b) Person and party: "Person" includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies. "Party" includes any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any agency proceeding; but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes.

(c) Rule and rule making: "Rule" means the whole or any part of any agency statement of general applicability designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of any agency. "Rule making" means agency process for the formulation, amendment, or repeal of a rule and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor, or of valuations, costs, or accounting, or practices bearing upon any of the foregoing.

(d) Order and adjudication: "Order" means the whole or any part of the final disposition (whether affirmative, negative, or declaratory in form) of any agency in any matter other than rule making but including licensing. "Adjudication" means agency process for the formulation of an order.

(e) License and licensing: "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, membership, statutory exemption, or other form of permission. "Licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license.

(f) Sanction and relief: "Sanction" includes the whole or part of any agency (1) prohibition, requirement, limitation, or other condition affecting the freedom of any person; (2) withholding of relief; (3) imposition of any form of penalty or fine; (4) destruction, taking, seizure, or withholding of property; (5) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees; (6) requirement, revocation, or suspension of a license; or (7) taking of other compulsory or restrictive action. "Relief" includes the whole or part of any agency (1) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy; (2) recognition of any claim, right, immunity, privilege, exemption, or exception; or (3) taking of any other action beneficial to any person.

(g) Agency proceeding and action: "Agency proceeding" means any agency process as defined in subsections (c), (d), and (e) of this section. For the purposes of section 10, "agency action" includes the whole or part of every agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.

PUBLIC INFORMATION

SEC. 3. Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of any agency—

(a) Rules: Every agency shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organization; (2) the established places and methods whereby the public may secure information or make submittals or requests; (3) statements of the general course and method by which its rule making and adjudicating functions are channeled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations; and (4) substantive rules adopted as authorized by law and statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public. No person shall in any manner be required to resort to organization or procedure not so published.

(b) Opinions and orders: Every agency shall publish or, in accordance with published rule, make available to public inspection all final opinions or orders in the adjudication of cases except those required for good cause to be held confidential and not cited as precedents.

(c) Public records: Save as otherwise required by statute, matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found.

RULE MAKING

SEC. 4. Except to the extent that there is involved (1) any military, naval, or foreign affairs function of the United States or (2) any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts—

(a) Notice: General notice of proposed rule making shall be published in the Federal Register and shall include (1) a statement of the time, place, and nature of public rule making proceedings; (2) reference to the authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved. Except where notice or hearing is required by statute, this subsection shall not apply to interpretative rules, general statements of policy, rules of agency organization, procedure, or practice, or in any situation in which the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(b) Procedures: After notice required by this section, the agency shall afford interested persons an opportunity to participate in the rule making through submission of written data, views, or argument with or without opportunity to present the same orally in any manner; and, after consideration of all relevant matter presented, the agency shall incorporate in any rules adopted a concise general statement of their basis and purpose. Where rules are required by law to be made upon the record after opportunity for or upon an agency hearing, the requirements of sections 7 and 8 shall apply in place of the provisions of this subsection.

(c) Effective dates: The required publication or service of any substantive rule (other than one granting or recognizing exemption or relieving restriction or interpretative rules and statements of policy) shall be made not less than 30 days prior to the effective date thereof except as otherwise provided by the agency upon good cause found and published with the rule.

(d) Petitions: Every agency shall accord any interested person the right to petition

for the issuance, amendment, or repeal of a rule.

ADJUDICATION

SEC. 5. In every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved (1) any matter subject to a subsequent trial of the law and the facts de novo in any court; (2) the selection or tenure of an officer or employee of the United States other than examiners appointed pursuant to section 11; (3) proceedings in which decisions rest solely on inspections, tests, or elections; (4) the conduct of military, naval, or foreign affairs functions; (5) cases in which an agency is acting as an agent for a court; and (6) the certification of employee representatives—

(a) Notice: Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, and nature thereof; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) the matters of fact and law asserted. In instances in which private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law and in other instances agencies may by rule require responsive pleading. In fixing the times and places for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(b) Procedure: The agency shall afford all interested parties opportunity for (1) the submission and consideration of facts, argument, offers of settlement, or proposals of adjustment where time, the nature of the proceeding, and the public interest permit and (2), to the extent that the parties are unable so to determine any controversy by consent, hearing, and decision upon notice and in conformity with sections 7 and 8.

(c) Separation of functions: The same officers who preside at the reception of evidence pursuant to section 7 shall make the recommended decision or initial decision required by section 8 except where such officers become unavailable to the agency. Save to the extent required for the disposition of ex parte matters as authorized by law, no such officer shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate; nor shall such officer be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency. No officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency in any case shall, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 8 except as witness or counsel in public proceedings. This subsection shall not apply in determining applications for initial licenses or the past reasonableness of rates; nor shall it be applicable in any manner to the agency or any member or members of the body comprising the agency.

(d) Declaratory orders: The agency is authorized in its sound discretion, with like effect as in the case of other orders, to issue a declaratory order to terminate a controversy or remove uncertainty.

ANCILLARY MATTERS

SEC. 6. Except as otherwise provided in this act—

(a) Appearance: Any person compelled to appear in person before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. Every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in any agency proceeding. So far as the responsible conduct of public business permits, any in-

terested person may appear before any agency or its responsible officers or employees for the presentation, adjustment, or determination of any issue, request, or controversy in any proceeding or in connection with any agency function, including stop-order or other summary actions. Every agency shall proceed with reasonable dispatch to conclude any matter presented to it except that due regard shall be had for the convenience and necessity of the parties or their representatives. Nothing herein shall be construed either to grant or to deny to any person who is not a lawyer the right to appear for or represent others before any agency or in any agency proceeding.

(b) Investigations: No process, requirement of a report, inspection, or other investigative act or demand shall be issued, made, or enforced in any manner or for any purpose except as authorized by law. Every person compelled to submit data or evidence shall be entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

(c) Subpenas: Agency subpenas authorized by law shall be issued to any party upon request and, as may be required by rules of procedure, upon a statement or showing of general relevance and reasonable scope of the evidence sought. Upon contest the court shall sustain any such subpoena or similar process or demand to the extent that it is found to be in accordance with law and, in any proceeding for enforcement, shall issue an order requiring the appearance of the witness or the production of the evidence or data under penalty of punishment for contempt in case of contumacious failure to do so.

(d) Denials: Prompt notice shall be given of the denial in whole or in part of any written application, petition, or other request of any interested person made in connection with any agency proceeding. Except in affirming a prior denial or where the denial is self-explanatory, such notice shall be accompanied by a simple statement of grounds.

HEARINGS

SEC. 7. In hearings which section 4 or 5 requires to be conducted pursuant to this section—

(a) Presiding officers: There shall preside at the taking of evidence (1) the agency, (2) one or more members of the body which comprises the agency, or (3) one or more examiners appointed as provided in this act; but nothing in this act shall be deemed to supersede the conduct of specified classes of proceedings in whole or part by or before boards or other officers specially provided for by or designated pursuant to statute. The functions of all presiding officers and of officers participating in decisions in conformity with section 8 shall be conducted in an impartial manner. Any such officer may at any time withdraw if he deems himself disqualified; and, upon the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification of any such officer, the agency shall determine the matter as a part of the record and decision in the case.

(b) Hearing powers: Officers presiding at hearings shall have authority, subject to the published rules of the agency and within its powers, to (1) administer oaths and affirmations, (2) issue subpenas authorized by law, (3) rule upon offers of proof and receive relevant evidence, (4) take or cause depositions to be taken whenever the ends of justice would be served thereby, (5) regulate or course of the hearing, (6) hold conferences for the settlement or simplification of the issues by consent of the parties, (7) dispose of procedural requests or similar matters, (8) make decisions or recommend decisions in conformity with section 8, and (9) take

any other action authorized by agency rule consistent with this act.

(c) Evidence: Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. Any evidence, oral or documentary, may be received, but every agency shall as a matter of policy provide for the exclusion of immaterial and unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except as supported by relevant, reliable, and probative evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses any agency may, where the interest of any party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(d) Record: The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision in accordance with section 8 and, upon payment of lawfully prescribed costs, shall be made available to the parties. Where any agency decision rests on official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the contrary.

DECISIONS

SEC. 8. In cases in which a hearing is required to be conducted in conformity with section 7—

(a) Action by subordinates: In cases in which the agency has not presided at the reception of the evidence, the officer who presided (or, in cases not subject to subsection (c) of section 5, any other officer or officers qualified to preside at hearings pursuant to section 7) shall initially decide the case or the agency shall require (in specific cases or by general rule) the entire record to be certified to it for initial decision. Whenever such officers make the initial decision and in the absence of either an appeal to the agency or review upon motion of the agency within time provided by rule, such decision shall without further proceedings then become the decision of the agency. On appeal from or review of the initial decisions of such officers the agency shall, except as it may limit the issues upon notice or by rule, have all the powers which it would have in making the initial decision. Whenever the agency makes the initial decision without having presided at the reception of the evidence, such officers shall first recommend a decision except that in rule making or determining applications for initial licenses (1) in lieu thereof the agency may issue a tentative decision or any of its responsible officers may recommend a decision or (2) any such procedure may be omitted in any case in which the agency finds upon the record that due and timely execution of its function imperatively and unavoidably so requires.

(b) Submittals and decisions: Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings or conclusions. All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the basis therefor, upon all the material issues of fact, law, or discretion

presented; and (2) the appropriate rule, order, sanction, relief, or denial thereof.

SANCTIONS AND POWERS

SEC. 9: In the exercise of any power or authority—

(a) In general: No sanction shall be imposed or substantive rule or order be issued except within jurisdiction delegated to the agency and as authorized by law.

(b) Licenses: In any case in which application is made for a license required by law the agency, with due regard to the rights or privileges of all the interested parties or adversely affected persons and with reasonable dispatch, shall set and complete any proceedings required to be conducted pursuant to sections 7 and 8 of this act or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, no withdrawal, suspension, revocation, or annulment of any license shall be lawful unless, prior to the institution of agency proceedings therefor, facts or conduct which may warrant such action shall have been called to the attention of the licensee by the agency in writing and the licensee shall have been accorded opportunity to demonstrate or achieve compliance with all lawful requirements. In any case in which the licensee has, in accordance with agency rules, made timely and sufficient application for a renewal or a new license, no license with reference to any activity of a continuing nature shall expire until such application shall have been finally determined by the agency.

JUDICIAL REVIEW

SEC. 10. Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—

(a) Right of review: Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

(b) Form and venue of action: The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. Agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.

(c) Reviewable acts: Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. Except as otherwise expressly required by statute, agency action shall be final whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule) for an appeal to superior agency authority.

(d) Interim relief: Pending judicial review any agency is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, every reviewing court (including every court to which a case may be taken on appeal from or upon application for certiorari or other writ to a reviewing court) is authorized to issue all necessary and appropriate process to postpone the effective date

of any agency action or to preserve status or rights pending conclusion of the review proceedings.

(e) Scope of review: So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by the parties, and due account shall be taken of the rule of prejudicial error.

EXAMINERS

SEC. 11. Subject to the civil-service and other laws to the extent not inconsistent with this act, there shall be appointed by and for each agency as many qualified and competent examiners as may be necessary for proceedings pursuant to sections 7 and 8, who shall be assigned to cases in rotation so far as practicable and shall perform no duties inconsistent with their duties and responsibilities as examiners. Examiners shall be removable by the agency in which they are employed only for good cause established and determined by the Civil Service Commission (hereinafter called the Commission) after opportunity for hearing and upon the record thereof. Examiners shall receive compensation prescribed by the Commission independently of agency recommendations or ratings and in accordance with the Classification Act of 1923, as amended, except that the provisions of paragraphs (2) and (3) of subsection (b) of section 7 of said act, as amended, and the provisions of section 9 of said act, as amended, shall not be applicable. Agencies occasionally or temporarily insufficiently staffed may utilize examiners selected by the Commission from and with the consent of other agencies. For the purposes of this section, the Commission is authorized to make investigations, require reports by agencies, issue reports, including an annual report to the Congress, promulgate rules, appoint such advisory committees as may be deemed necessary, recommend legislation, subpoena witnesses or records, and pay witness fees as established for the United States courts.

CONSTRUCTION AND EFFECT

SEC. 12. Nothing in this act shall be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. If any provision of this act or the application thereof is held invalid, the remainder of this act or other applications of such provision shall not be affected. Every agency is granted all authority necessary to comply with the requirements of this act through the issuance of rules or otherwise. No subsequent legislation shall be held to supersede or modify the provisions of this act except to the extent that such legislation shall do so expressly. This act shall take effect 3 months after its approval except that sections 7 and 8 shall take effect 6 months after such approval, the

requirement of the selection of examiners pursuant to section 11 shall not become effective until 1 year after such approval, and no procedural requirement shall be mandatory as to any agency proceeding initiated prior to the effective date of such requirement.

✓ The amendment was agreed to.

The PRESIDING OFFICER. The bill is before the Senate and open to further amendment. If there be no further amendment to be offered, the question is on the engrossment and the third reading of the bill.

The bill (S. 7) was ordered to be engrossed for a third reading, read the third time, and passed.

ESTATE OF MICHAEL J. McDONOUGH, DECEASED

The PRESIDING OFFICER (Mr. TUNNELL in the chair) laid before the Senate a message from the House of Representatives announcing its disagreement to the amendment of the Senate to the bill (H. R. 2433) for the relief of the estate of Michael J. McDonough, deceased, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. ELLENDER. I move that the Senate insist upon its amendment, agree to the request of the House for a conference, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. ELLENDER, Mr. EASTLAND, and Mr. MORSE conferees on the part of the Senate.

ESTATE OF WILLIAM N. THERRIAULT AND MILLCENT THERRIAULT

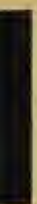
The PRESIDING OFFICER laid before the Senate a message from the House of Representatives announcing its disagreement to the amendment of the Senate to the bill (H. R. 3808) for the relief of the estate of William N. Therriault and Millicent Therriault, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. ELLENDER. I move that the Senate insist upon its amendment, agree to the request of the House for a conference, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. ELLENDER, Mr. O'DANIEL, and Mr. WILSON conferees on the part of the Senate.

SETTLEMENT OF COAST GUARD CLAIMS

Mr. ELLENDER. Mr. President on February 21, 1946, the Senate passed Senate bill 1811. The bill provided for the settlement of Coast Guard claims, and when it was called up I made an explanation of it on the floor of the Senate. On March 4, 1946, the House of Representatives passed an identical bill which was subsequently referred to the Senate Committee on Claims. From that committee I now report favorably, without amendment, House bill 5239 to amend Public Law 277, Seventy-ninth Congress, so as to provide the Coast Guard, at such time as it is transferred back to the Treasury Department, with a system of laws for the settlement of claims, and for other purposes, and I submit a report (No. 1038) thereon. I ask unanimous consent that the Senate proceed to consider the bill.



79TH CONGRESS
2D SESSION

S. 7

IN THE HOUSE OF REPRESENTATIVES

MARCH 13, 1946

Referred to the Committee on the Judiciary

AN ACT

To improve the administration of justice by prescribing fair administrative procedure.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Administrative Procedure
4 Act".

DEFINITIONS

5
6 SEC. 2. As used in this Act—

7 (a) AGENCY.—"Agency" means each authority
8 (whether or not within or subject to review by another
9 agency) of the Government of the United States other
10 than Congress, the courts, or the governments of the pos-
11 sessions, Territories, or the District of Columbia. Nothing

1 in this Act shall be construed to repeal delegations of author-
2 ity as provided by law. Except as to the requirements of
3 section 3, there shall be excluded from the operation of
4 this Act (1) agencies composed of representatives of the
5 parties or of representatives of organizations of the parties
6 to the disputes determined by them, (2) courts martial and
7 military commissions, (3) military or naval authority
8 exercised in the field in time of war or in occupied
9 territory, or (4) functions which by law expire on
10 the termination of present hostilities, within any fixed period
11 thereafter, or before July 1, 1947, and the functions con-
12 ferred by the following statutes: Selective Training and
13 Service Act of 1940; Contract Settlement Act of 1944;
14 Surplus Property Act of 1944.

15 (b) PERSON AND PARTY.—“Person” includes indi-
16 viduals, partnerships, corporations, associations, or public
17 or private organizations of any character other than agencies.
18 “Party” includes any person or agency named or admitted
19 as a party, or properly seeking and entitled as of right to
20 be admitted as a party, in any agency proceeding; but noth-
21 ing herein shall be construed to prevent an agency from
22 admitting any person or agency as a party for limited
23 purposes.

24 (c) RULE AND RULE MAKING.—“Rule” means the
25 whole or any part of any agency statement of general ap-

1 plicability designed to implement, interpret, or prescribe law
2 or policy or to describe the organization, procedure, or
3 practice requirements of any agency. "Rule making" means
4 agency process for the formulation, amendment, or repeal
5 of a rule and includes the approval or prescription for the
6 future of rates, wages, corporate or financial structures or
7 reorganizations thereof, prices, facilities, appliances, serv-
8 ices, or allowances therefor, or of valuations, costs, or
9 accounting, or practices bearing upon any of the foregoing.

10 (d) ORDER AND ADJUDICATION.—"Order" means the
11 whole or any part of the final disposition (whether affirma-
12 tive, negative, or declaratory in form) of any agency in
13 any matter other than rule making but including licensing.
14 "Adjudication" means agency process for the formulation
15 of an order.

16 (e) LICENSE AND LICENSING.—"License" includes the
17 whole or part of any agency permit, certificate, approval,
18 registration, charter, membership, statutory exemption, or
19 other form of permission. "Licensing" includes agency
20 process respecting the grant, renewal, denial, revocation;
21 suspension, annulment, withdrawal, limitation, amendment;
22 modification, or conditioning of a license.

23 (f) SANCTION AND RELIEF.—"Sanction" includes the
24 whole or part of any agency (1) prohibition, requirement,
25 limitation, or other condition affecting the freedom of any

1 person; (2) withholding of relief; (3) imposition of any
2 form of penalty or fine; (4) destruction, taking, seizure, or
3 withholding of property; (5) assessment of damages, reim-
4 bursement, restitution, compensation, costs, charges, or fees;
5 (6) requirement, revocation, or suspension of a license; or
6 (7) taking of other compulsory or restrictive action. “Re-
7 lief” includes the whole or part of any agency (1) grant of
8 money, assistance, license, authority, exemption, exception,
9 privilege, or remedy; (2) recognition of any claim, right,
10 immunity, privilege, exemption, or exception; or (3) taking
11 of any other action beneficial to any person.

12 (g) AGENCY PROCEEDING AND ACTION.—“Agency
13 proceeding” means any agency process as defined in subsec-
14 tions (c), (d), and (e) of this section. For the purposes of
15 section 10, “agency action” includes the whole or part of
16 every agency rule, order, license, sanction, relief, or the
17 equivalent or denial thereof, or failure to act.

18 PUBLIC INFORMATION

19 SEC. 3. Except to the extent that there is involved (1)
20 any function of the United States requiring secrecy in the
21 public interest or (2) any matter relating solely to the in-
22 ternal management of an agency—

23 (a) RULES.—Every agency shall separately state and
24 currently publish in the Federal Register (1) descriptions of
25 its central and field organization; (2) the established places

1 and methods whereby the public may secure information or
2 make submittals or requests; (3) statements of the general
3 course and method by which its rule making and adjudicating
4 functions are channeled and determined, including the nature
5 and requirements of all formal or informal procedures avail-
6 able as well as forms and instructions as to the scope and
7 contents of all papers, reports, or examinations; and (4)
8 substantive rules adopted as authorized by law and statements
9 of general policy or interpretations formulated and adopted
10 by the agency for the guidance of the public. No person
11 shall in any manner be required to resort to organization or
12 procedure not so published.

13 (b) OPINIONS AND ORDERS.—Every agency shall pub-
14 lish or, in accordance with published rule, make available to
15 public inspection all final opinions or orders in the adjudica-
16 tion of cases except those required for good cause to be held
17 confidential and not cited as precedents.

18 (c) PUBLIC RECORDS.—Save as otherwise required by
19 statute, matters of official record shall in accordance with pub-
20 lished rule be made available to persons properly and directly
21 concerned except information held confidential for good cause
22 found.

23 RULE MAKING

24 SEC. 4. Except to the extent that there is involved (1)
25 any military, naval, or foreign affairs function of the United

1 States or (2) any matter relating to agency management or
2 personnel or to public property, loans, grants, benefits, or
3 contracts—

4 (a) NOTICE.—General notice of proposed rule making
5 shall be published in the Federal Register and shall include
6 (1) a statement of the time, place, and nature of public rule
7 making proceedings; (2) reference to the authority under
8 which the rule is proposed; and (3) either the terms or sub-
9 stance of the proposed rule or a description of the subjects
10 and issues involved. Except where notice or hearing is re-
11 quired by statute, this subsection shall not apply to inter-
12 pretative rules, general statements of policy, rules of agency
13 organization, procedure, or practice, or in any situation in
14 which the agency for good cause finds (and incorporates
15 the finding and a brief statement of the reasons therefor in
16 the rules issued) that notice and public procedure thereon
17 are impracticable, unnecessary, or contrary to the public
18 interest.

19 (b) PROCEDURES.—After notice required by this sec-
20 tion, the agency shall afford interested persons an oppor-
21 tunity to participate in the rule making through submission
22 of written data, views, or argument with or without oppor-
23 tunity to present the same orally in any manner; and, after
24 consideration of all relevant matter presented, the agency
25 shall incorporate in any rules adopted a concise general

1 statement of their basis and purpose. Where rules are
2 required by law to be made upon the record after oppor-
3 tunity for or upon an agency hearing, the requirements of
4 sections 7 and 8 shall apply in place of the provisions of
5 this subsection.

6 (c) EFFECTIVE DATES.—The required publication or
7 service of any substantive rule (other than one granting or
8 recognizing exemption or relieving restriction or interpretative
9 rules and statements of policy) shall be made not less than
10 thirty days prior to the effective date thereof except as other-
11 wise provided by the agency upon good cause found and
12 published with the rule.

13 (d) PETITIONS.—Every agency shall accord any inter-
14 ested person the right to petition for the issuance, amendment,
15 or repeal of a rule.

16 ADJUDICATION

17 SEC. 5. In every case of adjudication required by statute
18 to be determined on the record after opportunity for an
19 agency hearing, except to the extent that there is involved
20 (1) any matter subject to a subsequent trial of the law and
21 the facts de novo in any court; (2) the selection or tenure
22 of an officer or employee of the United States other than
23 examiners appointed pursuant to section 11; (3) proceed-
24 ings in which decisions rest solely on inspections, tests, or
25 elections; (4) the conduct of military, naval, or foreign

1 affairs functions; (5) cases in which an agency is acting as
2 an agent for a court; and (6) the certification of employee
3 representatives—

4 (a) NOTICE.—Persons entitled to notice of an agency
5 hearing shall be timely informed of (1) the time, place, and
6 nature thereof; (2) the legal authority and jurisdiction under
7 which the hearing is to be held; and (3) the matters of fact
8 and law asserted. In instances in which private persons are
9 the moving parties, other parties to the proceeding shall give
10 prompt notice of issues controverted in fact or law; and in
11 other instances agencies may by rule require responsive
12 pleading. In fixing the times and places for hearings, due
13 regard shall be had for the convenience and necessity of the
14 parties or their representatives.

15 (b) PROCEDURE.—The agency shall afford all in-
16 terested parties opportunity for (1) the submission and con-
17 sideration of facts, arguments, offers of settlement, or propo-
18 sals of adjustment where time, the nature of the proceeding,
19 and the public interest permit and (2), to the extent that
20 the parties are unable so to determine any controversy by
21 consent, hearing and decision upon notice and in conformity
22 with sections 7 and 8.

23 (c) SEPARATION OF FUNCTIONS.—The same officers
24 who preside at the reception of evidence pursuant to section
25 7 shall make the recommended decision or initial decision

1 required by section 8 except where such officers become un-
2 available to the agency. Save to the extent required for the
3 disposition of ex parte matters as authorized by law, no such
4 officer shall consult any person or party on any fact in issue
5 unless upon notice and opportunity for all parties to partici-
6 pate; nor shall such officer be responsible to or subject to the
7 supervision or direction of any officer, employee, or agent
8 engaged in the performance of investigative or prosecuting
9 functions for any agency. No officer, employee, or agent
10 engaged in the performance of investigative or prosecuting
11 functions for any agency in any case shall, in that or a
12 factually related case, participate or advise in the decision,
13 recommended decision, or agency review pursuant to section
14 8 except as witness or counsel in public proceedings. This
15 subsection shall not apply in determining applications for
16 initial licenses or the past reasonableness of rates; nor shall
17 it be applicable in any manner to the agency or any member
18 or members of the body comprising the agency.

19 (d) DECLARATORY ORDERS.—The agency is author-
20 ized in its sound discretion, with like effect as in the case of
21 other orders, to issue a declaratory order to terminate a con-
22 troversy or remove uncertainty.

23 ANCILLARY MATTERS

24 SEC. 6. Except as otherwise provided in this Act—

1 (a) APPEARANCE.—Any person compelled to appear in
2 person before any agency or representative thereof shall be
3 accorded the right to be accompanied, represented, and
4 advised by counsel or, if permitted by the agency, by other
5 qualified representative. Every party shall be accorded the
6 right to appear in person or by or with counsel or other
7 duly qualified representative in any agency proceeding. So
8 far as the responsible conduct of public business permits, any
9 interested person may appear before any agency or its
10 responsible officers or employees for the presentation, adjust-
11 ment, or determination of any issue, request, or controversy
12 in any proceeding or in connection with any agency function,
13 including stop-order or other summary actions. Every
14 agency shall proceed with reasonable dispatch to conclude any
15 matter presented to it except that due regard shall be had for
16 the convenience and necessity of the parties or their repre-
17 sentatives. Nothing herein shall be construed either to grant
18 or to deny to any person who is not a lawyer the right to
19 appear for or represent others before any agency or in any
20 agency proceeding.

21 (b) INVESTIGATIONS.—No process, requirement of a
22 report, inspection, or other investigative act or demand shall
23 be issued, made, or enforced in any manner or for any
24 purpose except as authorized by law. Every person com-
25 pelled to submit data or evidence shall be entitled to retain

1 or, on payment of lawfully prescribed costs, procure a copy
2 or transcript thereof, except that in a nonpublic investigatory
3 proceeding the witness may for good cause be limited to
4 inspection of the official transcript of his testimony.

5 (c) SUBPENAS.—Agency subpoenas authorized by law
6 shall be issued to any party upon request and, as may be
7 required by rules of procedure, upon a statement or showing
8 of general relevance and reasonable scope of the evidence
9 sought. Upon contest the court shall sustain any such
10 subpoena or similar process or demand to the extent that it is
11 found to be in accordance with law and, in any proceeding
12 for enforcement, shall issue an order requiring the appear-
13 ance of the witness or the production of the evidence or data
14 under penalty of punishment for contempt in case of con-
15 tumacious failure to do so.

16 (d) DENIALS.—Prompt notice shall be given of the
17 denial in whole or in part of any written application, petition,
18 or other request of any interested person made in connection
19 with any agency proceeding. Except in affirming a prior
20 denial or where the denial is self-explanatory, such notice
21 shall be accompanied by a simple statement of grounds.

22 HEARINGS

23 SEC. 7. In hearings which section 4 or 5 requires to be
24 conducted pursuant to this section—

25 (a) PRESIDING OFFICERS.—There shall preside at the

1 taking of evidence (1) the agency, (2) one or more members
2 of the body which comprises the agency, or (3) one or more
3 examiners appointed as provided in this Act; but nothing
4 in this Act shall be deemed to supersede the conduct of
5 specified classes of proceedings in whole or part by or before
6 boards or other officers specially provided for by or desig-
7 nated pursuant to statute. The functions of all presiding
8 officers and of officers participating in decisions in conformity
9 with section 8 shall be conducted in an impartial manner.
10 Any such officer may at any time withdraw if he deems him-
11 self disqualified; and, upon the filing in good faith of a timely
12 and sufficient affidavit of personal bias or disqualification of
13 any such officer, the agency shall determine the matter as a
14 part of the record and decision in the case.

15 (b) HEARING POWERS.—Officers presiding at hearings
16 shall have authority, subject to the published rules of the
17 agency and within its powers, to (1) administer oaths and
18 affirmations, (2) issue subpoenas authorized by law, (3) rule
19 upon offers of proof and receive relevant evidence, (4) take
20 or cause depositions to be taken whenever the ends of justice
21 would be served thereby, (5) regulate the course of the hear-
22 ing, (6) hold conferences for the settlement or simplifica-
23 tion of the issues by consent of the parties, (7) dispose of pro-
24 cedural requests or similar matters, (8) make decisions or
25 recommend decisions in conformity with section 8, and (9)

1 take any other action authorized by agency rule consistent
2 with this Act.

3 (c) EVIDENCE.—Except as statutes otherwise provide,
4 the proponent of a rule or order shall have the burden of
5 proof. Any evidence, oral or documentary, may be received,
6 but every agency shall as a matter of policy provide for the
7 exclusion of immaterial and unduly repetitious evidence and
8 no sanction shall be imposed or rule or order be issued
9 except as supported by relevant, reliable, and probative evi-
10 dence. Every party shall have the right to present his case
11 or defense by oral or documentary evidence, to submit rebut-
12 tal evidence, and to conduct such cross-examination as may
13 be required for a full and true disclosure of the facts. In
14 rule making or determining claims for money or benefits
15 or applications for initial licenses any agency may, where
16 the interest of any party will not be prejudiced thereby, adopt
17 procedures for the submission of all or part of the evidence
18 in written form.

19 (d) RECORD.—The transcript of testimony and exhibits,
20 together with all papers and requests filed in the proceeding,
21 shall constitute the exclusive record for decision in accordance
22 with section 8 and, upon payment of lawfully prescribed
23 costs, shall be made available to the parties. Where any
24 agency decision rests on official notice of a material fact not
25 appearing in the evidence in the record, any party shall on

1 timely request be afforded an opportunity to show the
2 contrary.

3 DECISION

4 SEC. 8. In cases in which a hearing is required to be
5 conducted in conformity with section 7—

6 (a) ACTION BY SUBORDINATES.—In cases in which
7 the agency has not presided at the reception of the evidence,
8 the officer who presided (or, in cases not subject to subsection
9 (c) of section 5, any other officer or officers qualified to
10 preside at hearings pursuant to section 7) shall initially
11 decide the case or the agency shall require (in specific cases
12 or by general rule) the entire record to be certified to it
13 for initial decision. Whenever such officers make the initial
14 decision and in the absence of either an appeal to the agency
15 or review upon motion of the agency within time provided
16 by rule, such decision shall without further proceedings then
17 become the decision of the agency. On appeal from or
18 review of the initial decisions of such officers the agency shall,
19 except as it may limit the issues upon notice or by rule, have
20 all the powers which it would have in making the initial
21 decision. Whenever the agency makes the initial decision
22 without having presided at the reception of the evidence, such
23 officers shall first recommend a decision except that in rule
24 making or determining applications for initial licenses (1)
25 in lieu thereof the agency may issue a tentative decision

1 or any of its responsible officers may recommend a decision
2 or (2) any such procedure may be omitted in any case in
3 which the agency finds upon the record that due and timely
4 execution of its function imperatively and unavoidably so
5 requires.

6 (b) SUBMITTALS AND DECISIONS.—Prior to each rec-
7 ommended, initial, or tentative decision, or decision upon
8 agency review of the decision of subordinate officers the parties
9 shall be afforded a reasonable opportunity to submit for the
10 consideration of the officers participating in such decisions
11 (1) proposed findings and conclusions, or (2) exceptions
12 to the decisions or recommended decisions of subordinate
13 officers or to tentative agency decisions, and (3) supporting
14 reasons for such exceptions or proposed findings or conclu-
15 sions. All decisions (including initial, recommended, or
16 tentative decisions) shall become a part of the record and
17 include a statement of (1) findings and conclusions, as well
18 as the basis therefor, upon all the material issues of fact, law,
19 or discretion presented; and (2) the appropriate rule, order,
20 sanction, relief, or denial thereof.

21 SANCTIONS AND POWERS

22 SEC. 9. In the exercise of any power or authority—

23 (a) IN GENERAL.—No sanction shall be imposed or
24 substantive rule or order be issued except within jurisdiction
25 delegated to the agency and as authorized by law.

1 (b) LICENSES.—In any case in which application is
2 made for a license required by law the agency, with due re-
3 gard to the rights or privileges of all the interested parties or
4 adversely affected persons and with reasonable dispatch, shall
5 set and complete any proceedings required to be conducted
6 pursuant to sections 7 and 8 of this Act or other proceedings
7 required by law and shall make its decision. Except in cases
8 of willfulness or those in which public health, interest, or safety
9 requires otherwise, no withdrawal, suspension, revocation, or
10 annulment of any license shall be lawful unless, prior to the
11 institution of agency proceedings therefor, facts or conduct
12 which may warrant such action shall have been called to the
13 attention of the licensee by the agency in writing and the
14 licensee shall have been accorded opportunity to demonstrate
15 or achieve compliance with all lawful requirements. In any
16 case in which the licensee has, in accordance with agency
17 rules, made timely and sufficient application for a renewal or
18 a new license, no license with reference to any activity of a
19 continuing nature shall expire until such application shall
20 have been finally determined by the agency.

21 JUDICIAL REVIEW

22 SEC. 10. Except so far as (1) statutes preclude judicial
23 review or (2) agency action is by law committed to agency
24 discretion—

25 (a) RIGHT OF REVIEW.—Any person suffering legal

1 wrong because of any agency action, or adversely affected or
2 aggrieved by such action within the meaning of any relevant
3 statute, shall be entitled to judicial review thereof.

4 (b) FORM AND VENUE OF ACTION.—The form of pro-
5 ceeding for judicial review shall be any special statutory re-
6 view proceeding relevant to the subject matter in any court
7 specified by statute or, in the absence or inadequacy thereof,
8 any applicable form of legal action (including actions for
9 declaratory judgments or writs of prohibitory or mandatory
10 injunction or habeas corpus) in any court of competent juris-
11 diction. Agency action shall be subject to judicial review in
12 civil or criminal proceedings for judicial enforcement except
13 to the extent that prior, adequate, and exclusive opportunity
14 for such review is provided by law.

15 (c) REVIEWABLE ACTS.—Every agency action made
16 reviewable by statute and every final agency action for which
17 there is no other adequate remedy in any court shall be sub-
18 ject to judicial review. Any preliminary, procedural, or
19 intermediate agency action or ruling not directly review-
20 able shall be subject to review upon the review of the final
21 agency action. Except as otherwise expressly required by
22 statute, agency action shall be final whether or not there has
23 been presented or determined any application for a declar-
24 atory order, for any form of reconsideration, or (unless the

1 agency otherwise requires by rule) for an appeal to superior
2 agency authority.

3 (d) INTERIM RELIEF.—Pending judicial review any
4 agency is authorized, where it finds that justice so requires,
5 to postpone the effective date of any action taken by it. Upon
6 such conditions as may be required and to the extent necessary
7 to prevent irreparable injury, every reviewing court (includ-
8 ing every court to which a case may be taken on appeal from
9 or upon application for certiorari or other writ to a reviewing
10 court) is authorized to issue all necessary and appropriate
11 process to postpone the effective date of any agency action or
12 to preserve status or rights pending conclusion of the review
13 proceedings.

14 (e) SCOPE OF REVIEW.—So far as necessary to deci-
15 sion and where presented the reviewing court shall decide
16 all relevant questions of law, interpret, constitutional and
17 statutory provisions, and determine the meaning or applica-
18 bility of the terms of any agency action. It shall (A) compel
19 agency action unlawfully withheld or unreasonably delayed;
20 and (B) hold unlawful and set aside agency action, findings,
21 and conclusions found to be (1) arbitrary, capricious, or
22 otherwise not in accordance with law; (2) contrary to con-
23 stitutional right, power, privilege, or immunity; (3) in
24 excess of statutory jurisdiction, authority, or limitations, or
25 short of statutory right; (4) without observance of procedure

1 required by law: (5) unsupported by substantial evidence
2 in any case subject to the requirements of sections 7 and 8 or
3 otherwise reviewed on the record of an agency hearing pro-
4 vided by statute; or (6) unwarranted by the facts to the
5 extent that the facts are subject to trial de novo by the
6 reviewing court. In making the foregoing determinations
7 the court shall review the whole record or such portions
8 thereof as may be cited by the parties, and due account shall
9 be taken of the rule of prejudicial error.

10 EXAMINERS

11 SEC. 11. Subject to the civil-service and other laws to
12 the extent not inconsistent with this Act, there shall be ap-
13 pointed by and for each agency as many qualified and
14 competent examiners as may be necessary for proceedings
15 pursuant to sections 7 and 8, who shall be assigned to cases
16 in rotation so far as practicable and shall perform no duties
17 inconsistent with their duties and responsibilities as examin-
18 ers. Examiners shall be removable by the agency in which
19 they are employed only for good cause established and de-
20 termined by the Civil Service Commission (hereinafter called
21 the Commission) after opportunity for hearing and upon the
22 record thereof. Examiners shall receive compensation pre-
23 scribed by the Commission independently of agency recom-
24 mendations or ratings and in accordance with the Classifi-
25 cation Act of 1923, as amended, except that the provisions

1 of paragraphs (2) and (3) of subsection (b) of section 7
2 of said Act, as amended, and the provisions of section 9 of
3 said Act, as amended, shall not be applicable. Agencies
4 occasionally or temporarily insufficiently staffed may utilize
5 examiners selected by the Commission from and with the
6 consent of other agencies. For the purposes of this section,
7 the Commission is authorized to make investigations, require
8 reports by agencies, issue reports, including an annual re-
9 port to the Congress, promulgate rules, appoint such advisory
10 committees as may be deemed necessary, recommend legisla-
11 tion, subpoena witnesses or records, and pay witness fees as
12 established for the United States courts.

13 CONSTRUCTION AND EFFECT

14 SEC. 12. Nothing in this Act shall be held to diminish
15 the constitutional rights of any person or to limit or repeal
16 additional requirements imposed by statute or otherwise recog-
17 nized by law. Except as otherwise required by law, all re-
18 quirements or privileges relating to evidence or procedure
19 shall apply equally to agencies and persons. If any provision
20 of this Act or the application thereof is held invalid, the
21 remainder of this Act or other applications of such provision
22 shall not be affected. Every agency is granted all authority
23 necessary to comply with the requirements of this Act through
24 the issuance of rules or otherwise. No subsequent legislation
25 shall be held to supersede or modify the provisions of this Act

1 except to the extent that such legislation shall do so expressly.
2 This Act shall take effect three months after its approval
3 except that sections 7 and 8 shall take effect six months
4 after such approval, the requirement of the selection of
5 examiners pursuant to section 11 shall not become effective
6 until one year after such approval, and no procedural
7 requirement shall be mandatory as to any agency proceeding
8 initiated prior to the effective date of such requirement.

Passed the Senate March 12 (legislative day, March
5), 1946.

Attest:

LESLIE L. BIFFLE,

Secretary.

AN ACT

To improve the administration of justice by
prescribing fair administrative procedure.

MARCH 13, 1946

Referred to the Committee on the Judiciary



DIGEST OF
CONGRESSIONAL PROCEEDINGS
OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
Legislative Reports and Service Section
(For Department staff only)

Issued May 6, 1946
For actions of May 3, 1946
79th-2nd, No. 82

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HIGHLIGHTS: Sen. Langer criticized 30¢ wheat bonus and blamed Government for potato spoilage. Sen. Mead inserted figures on UNRRA food shipments to Poland. House passed bill authorizing food shipments to enemy countries; ready for President. Rep. Wadsworth urged removal of livestock from price control and cited Secretary Anderson's testimony on "black market." Rep. Norblad charged Navy food wastage. Rep. Kefauver described TVA work on farm machinery, etc. House committee reported revised administrative-law bill. Rep. Flannagan introduced bill to amend Agricultural Marketing Agreement Act. Sen. Wherry inserted newspaper article reporting Farmers Union demand for removal of Secretary Anderson.

SENATE

1. BRITISH-LOAN BILL. Continued debate on this bill, S. J. Res. 138 (pp. 4462-84).
2. WHEAT SHORTAGE; POTATOES SPOILAGE; ST. LAWRENCE WATERWAY. Sen. Langer, N. Dak., criticized the 30-cent offer for wheat to those who didn't respond to the previous appeal, blamed the Government for spoilage of "4,000 carloads of potatoes!" and spoke in favor of the St. Lawrence waterway as a means of marketing potatoes; and Sen. Aiken, Vt., spoke in favor of the waterway (pp. 4484-6).
3. FOREIGN RELIEF. Sen. Mead, N. Y., inserted figures on UNRRA shipments to Poland (pp. 4489-90). Sen. Mead inserted a petition from the Community Church of N. Y. urging the pooling of world food resources (p. 4461).
4. EDUCATION. Sen. Mead recommended use of surplus buildings for colleges and universities, and financial assistance by FWA for colleges and universities (pp. 4488-90).
Sen. Langer inserted a Ray Farmers Union resolution favoring Federal aid for education (p. 4461).
5. PRICE CONTROL; PRIORITIES. Sen. Wherry, Nebr., inserted an Omaha Needle Industries resolution favoring abolition of OPA and CPA "unless workable procedures... are formulated" (pp. 4459-60).
6. FARM CREDIT; RETIREMENT. Received a 7th Farm Credit District petition for inclusion of farm loan association employees under the Civil Service Retirement Act (p. 4460).

7. SURPLUS PROPERTY. Received an American Legion-local petition for distribution of more surplus property to N. Dak. (pp. 4460-1).
8. RECESSED until Sat., May 4 (p. 4491). (May 4 proceedings not yet printed.)

HOUSE

9. FOREIGN RELIEF. Passed without amendment S. 2101, to permit shipments of food, etc., to enemy countries (pp. 4493-4). This bill will now be sent to the President.
10. STATE, JUSTICE, COMMERCE, JUDICIARY APPROPRIATION BILL. Passed with amendments this bill, H. R. 6056 (pp. 4494-525).
11. PRICE CONTROL. Rep. Wadsworth, N. Y., urged removal of livestock from price control and cited Secretary Anderson's recent testimony on the "black market" (p. 4508).
12. FOOD WASTAGE. Rep. Norblad, Oreg., claimed that the Navy has destroyed good food (p. 4527).
13. TENNESSEE VALLEY AUTHORITY. Rep. Kefauver, Tenn., described the TVA activities regarding farm machinery, food processing, forestry, housing, etc. (pp. 4527-31).
14. ADMINISTRATIVE LAW. The Judiciary Committee reported with amendment S. 7, to improve the administration of justice by prescribing fair administrative procedure (H. Rept. 1980)(p. 4544).

15. ADJOURNED until Mon., May 6 (p. 4544). Program for this week, as announced by Majority Leader McCormack: Mon., consent calendar; Tues., private calendar and resolution for study of surplus-property disposal; Wed.-Fri., Interior appropriation bill. He said there will be no roll call before Thurs., but that the deficiency and rescission conference reports may be taken up before that time if no roll call is demanded. (pp. 4525-6.)

BILLS INTRODUCED

16. MARKETING AGREEMENTS. H.R. 6303, by Rep. Flannagan, Va., to amend the Agricultural Marketing Agreement Act. To Agriculture Committee. (p. 4544.)
17. FORESTRY. H. R. 6298, by Rep. Jenkins, Ohio, to protect and facilitate the use of national forest lands in T. 2 N., R. 18 W. Ohio River Survey, Elizabeth township, Lawrence County, Ohio. To Agriculture Committee. (p. 4544.)
18. MONOPOLIES. H.R. 6301, by Rep. Mason, Ill., to supplement existing law against unlawful restraints and monopolies. To Judiciary Committee. (p. 4544.)
19. PERSONNEL. H.R. 6302, by Rep. Randolph, W. Va., to authorize the payment of compensation for time lost in the case of certain veteran and nonveteran U.S. employees restored to active duty after disapproval of charges against them. To Civil Service Committee. (p. 4544.)
20. HEALTH. S. 2143, by Sen. Taft, Ohio (for himself, Sen. Smith, N.J., and Sen. Ball, Minn.), to coordinate the health functions of the Federal Government in a single agency; to amend the Public Health Service Act for the following purposes: To expand the activities of the Public Health Service; to promote and

Mrs. DOUGLAS of Illinois. Mr. Speaker, during the grim winter of Valley Forge, Washington declared:

This liberty is going to look easy when men no longer have to give their lives for it.

A decade later a friend and Revolutionary colleague of Washington's, General Kosciusko, was rejoicing over the new constitution of his own country, which marked the birth of freedom for Poland. This constitution, like the other great documents of the eighteenth century, the Declaration of Independence and the declaration of the rights of man, recognized the equality of all men and the rights to religious freedom.

Unhappily Poland had only 2 years to think that liberty was "easy." Her greedy and powerful neighbors assassinated that liberty and gobbled up the nation. During the next century a Pole could never fancy that liberty was anything but very difficult but passionately to be desired. Men continued to be ready to give their lives for it, as they did once more in the First World War and recently in the Second.

No country, indeed, has suffered more excruciatingly than Poland. It was the first to take its stand against the juggernaut of evil, the Nazi panzer troops. The gallant Polish cavalry stood up against mechanized might and paid the price for it. Only later when the Nazis blitzed the rest of Europe, did we realize the miracle of pure valor which had slowed the Nazis for 1 month. But not only was Poland the first to feel the steel of the Nazis but for 6 years it endured the agonies of Nazi occupation. Three major campaigns were fought through this unhappy land and there was a systematic drive to exterminate the population. And when the Nazis were defeated, much of the agony continued. Today the plight of Poland is as pitiful as that of any land, standing in the backwash of war with famine and pestilence starkly confronting the people, and little political news trickling through "the iron curtain."

This liberty does not yet look easy to the Poles, but as Kosciusko once said:

All that the Poles have done, and all that they will still do in the future, proves that albeit we, the devoted soldiers of that country, are mortal, Poland is immortal.

Mr. WASIELEWSKI. Mr. Speaker, I ask unanimous consent that all Members may have three legislative days in which to extend their remarks in the RECORD on the subject of Poland.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. WASIELEWSKI. Mr. Speaker, I yield such time as he may require to the gentleman from New Jersey [Mr. CANFIELD].

Mr. CANFIELD. Mr. Speaker, year after year we here on this floor take time off on Polish Constitution Day to salute the brave people of Poland, recall their sacrifices on the altars of liberty, and recount our debts to them. Yet Poland continues to suffer, and within days we have the report from former President Hoover that nowhere in Europe is there more starvation than in the land whose

people first stood off the attacks of the Nazi hordes. We have the word of General Eisenhower that destruction in Poland was the worst. Salutes and encomiums do not feed the hungry, do not rebuild homes, and do not restore freedom. As the Big Four meet in Paris to plan the boundaries of Europe and promote world peace, it must be the hope of liberty-loving people everywhere there will be action to provide immediate relief and safeguard the rights and liberties of the Polish people.

(Mr. CANFIELD asked and was given permission to revise and extend his remarks.)

Mr. ROWAN. Mr. Speaker, the shooting war is over, but to multitudes in America the war will not have terminated until the small nations have been restored to their place in the sun. As an American, not of Polish extraction, but intensely sympathetic to the people of Polish ancestry, and to the people of Poland, because of the similarity of the troubles of my forebears with those of the people in Poland, I personally feel that until the Polish Constitution has been restored, until the Polish Republic has been reestablished, and until freedom again reigns in that heroic nation, America cannot say that its job in World War II has been completed.

It was brave little Poland that first issued the ultimatum to the German Nazi Army, "They shall not pass," when World War II became a reality. Until Poland again becomes the nation that it was before 1939—the Polish people have the right of self-determination—and Poland again becomes one of the sovereign nations of the world, our efforts in World War II will have been in vain.

On this, the anniversary of the Constitution of Poland, I, with millions of other Americans, want to rededicate myself to the cause of the restoration of free Poland and its Constitution.

The largest nationalistic group in the city of Chicago which I represent is of Polish extraction. May I pay tribute to the people of Polish lineage in Chicago by stating that no people in the second largest city of our Nation have been more loyal to America, more progressive, more patriotic, than those who trace their ancestry to the great, brave little nation that was the first to resist Hitler and his hordes, bent upon the subjugation of the small, independent countries of this world. Chicago reveres the patriotism and the loyalty of the people of Polish origin. Chicago, with a population of 3,500,000 people, salutes the people of Polish birth and ancestry on this great, heroic, freedom-loving occasion—the anniversary of the institution of the Polish Republic.

Every American, notwithstanding his nationalistic origin, can wholeheartedly join in paying tribute to the oppressed people of Poland on the anniversary of the adoption of their constitution, a document which was inspired by our great American Constitution. Poland sent some of her most gallant military strategists to the struggling colonies to help make possible our glorious republic.

Our debt to Poland did not, however, end with the culmination of the success-

ful struggle of the thirteen colonies for their independence. Since that day until the present the United States of America, and freedom-loving people everywhere, have reason to be grateful to the sons and daughters of Poland for their continuing contributions to our republic. Millions of men and women from Poland have been attracted to the United States and their descendants have made and are making colossal contributions to the well being and the progress and development of our Nation. Throughout the length and breadth of this Nation the influence of the people of Polish lineage is felt and it would be impossible to tabulate the magnificent effects of what the people of Polish ancestry have done for the United States.

Imbued with a spirit of liberty and freedom, closely akin to that of the people of the United States, people from Poland have come to the United States and have cherished our ideals of liberty. They have educated their children and taught them to revere and appreciate American institutions and ideals. There are no more patriotic people in our land today than those of Polish origin. Their patriotism, their zeal, and their willingness to sacrifice have been emphasized in the present World War II.

The sons and daughters of Polish ancestors in America today are never hesitant to express their appreciation of the services of World War I President Woodrow Wilson for his attempt to repay Poland for its services to our Republic in the days when it was struggling to obtain its freedom. Poland revered Woodrow Wilson and as a manifestation of its gratitude for his services one of the principal thoroughfares in Warsaw bore his name until the disciples of mechanized mass murder invaded that unfortunate land and destroyed the freedom and democracy which had been guaranteed it by the illustrious American President who guided the destinies of this Nation in the cause of democracy a quarter of a century ago.

There was no such word as appeasement in the lexicon of the patriotic Poles. Little Poland resisted the onslaught of the most ruthless conqueror the world has ever known. It was in Poland that the world for the first time learned of the might of the German armed forces, but Poland carries on today in all parts of the world and eventually, in the victory of the United Nations, America looks forward to the restoration of that great little Republic.

All the world can take cognizance and emulate the heroism of Poland in the sad days that have visited that land. In the meantime, the people of Poland can take courage in the fact that in this great Nation of ours its citizens, regardless of the ancestry of their forebears, look forward to the day when Poland will live again. Then too, the Polish people realize that America offers asylum to them now as it has in the past; that America appreciates the services of the people whose ancestors came from Poland. America appreciates the wide variety of services those individuals have given to this land and to the cause of democracy for which we are again fighting.

Chicago, the city which I represent, is proud of the fact that one-third of its representation in the Congress of the United States is of Polish origin.

[Mr. SAVAGE addressed the House. His remarks will appear hereafter in the Appendix.]

(Mr. SAVAGE asked and was given permission to revise and extend his remarks.)

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted as follows:

To Mr. LaFOLLETTE for 30 days on account of official business.

To Mr. ANDERSON of California (at the request of Mr. MARTIN of Massachusetts) on account of official business.

To Mr. BYRNES of Wisconsin (at the request of Mr. MARTIN of Massachusetts) for 3 days on account of official business.

To Mr. CHAPMAN (at the request of Mr. SPENCE) on account of official business.

To Mr. GREGORY (at the request of Mr. SPENCE) on account of official business.

ADJOURNMENT

Mr. WASIELEWSKI. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 6 o'clock and 52 minutes p. m.) the House, under its previous order, adjourned until Monday, May 6, 1946, at 12 o'clock noon.

COMMITTEE HEARINGS

COMMITTEE ON INDIAN AFFAIRS

(Monday, May 6, 1946)

There will be a meeting of the Committee on Indian Affairs at 10:30 a. m. on Monday, May 6, 1946, in the committee hearing room, 246 Old House Office Building to hear statements of members of the Sioux Tribal Council of the Pine Ridge Reservation, S. Dak., on pending legislation.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

(Monday, May 6, 1946)

There will be a meeting of the Subcommittee on Commerce and Trade of the Committee on Interstate and Foreign Commerce at 10 o'clock a. m., May 6, 1946.

Business to be considered: Public hearing on H. R. 4871 and S. 1367, providing for three additional Assistant Secretaries of Agriculture. Secretary Wallace will be the first witness.

COMMITTEE ON RIVERS AND HARBORS

Schedule for the closing days of hearings on the omnibus river and harbor authorization bill is as follows:

(Friday, May 3, 1946)

Cumberland River, Ky. and Tenn.
Apalachicola, Chattahoochee, and Flint Rivers, Ga. and Fla.

Schuylkill River, Pa., deepening of channel.

Illinois River, small-boat harbor at Peoria, Ill.

San Diego Harbor and Mission Bay, Calif.

Columbia River, from Vancouver, Wash., to The Dalles, Oreg.

(Monday and Tuesday, May 6 and 7, 1946)

Big Sandy River, Tug and Levisa Forks, Va., W. Va., and Ky.

(Wednesday and Thursday, May 8 and 9, 1946)

Arkansas River, Ark. and Okla.

COMMITTEE ON INVALID PENSIONS

(Tuesday, May 7, 1946)

There will be a public hearing before the Committee on Invalid Pensions at 10:30 a. m. on Tuesday, May 7, 1946, in the committee hearing room, 247 Old House Office Building, on H. R. 3908, entitled "A bill to provide increased pensions to members of the Regular Army, Navy, Marine Corps, and Coast Guard who become disabled by reason of their service therein during other than a period of war," which was introduced by Representative LESINSKI, of Michigan.

EXECUTIVE COMMUNICATIONS, ETC

1251. Under clause 2 of rule XXIV a letter from the Secretary of War transmitting a draft of a proposed bill to amend the act entitled "An act for the creation of an American Battle Monuments Commission to erect suitable memorials commemorating the services of the American soldier in Europe, and for other purposes," approved March 4, 1923, as amended, was taken from the Speaker's table and referred to the Committee on Foreign Affairs.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. BULWINKLE: Committee on Printing. Senate Concurrent Resolution 60. Concurrent resolution authorizing the Senate Committee on Interstate Commerce to have printed for its use additional copies of hearings held before said committee on S. 1253, Seventy-ninth Congress, relative to modification of railroad financial structures; without amendment (Rept. No. 1978). Referred to the House Calendar.

Mr. WALTER: Committee on the Judiciary. Senate 7. An act to improve the administration of justice by prescribing fair administrative procedure; with amendment (Rept. No. 1980). Referred to the Committee of the Whole House on the State of the Union.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. BOYKIN: Committee on Accounts. House Resolution 611. Resolution granting 6 months' salary and \$250 funeral expenses to Jessie E. Jones, wife of B. F. Jones, late an employee of the House; without amendment (Rept. No. 1979). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 3 of rule XXII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. BIEMILLER:

H. R. 6297. A bill to amend the Social Security Act, as amended, so as to change the

age for old-age and survivor benefits from 65 to 60; to the Committee on Ways and Means.

By Mr. JENKINS:

H. R. 6298. A bill to protect and facilitate the use of national forest lands in T. 2 N., R. 18 W. Ohio River Survey, township of Elizabeth, county of Lawrence, State of Ohio, and for other purposes; to the Committee on Agriculture.

By Mr. VOORHIS of California:

H. R. 6299. A bill relating to the exemption from claims of creditors of United States savings bonds of series E; to the Committee on Ways and Means.

By Mr. IZAC:

H. R. 6300. A bill to authorize the Secretary of the Navy to lend Navy Department equipment for use at the Twenty-eighth Annual National Convention of the American Legion; to the Committee on Naval Affairs.

By Mr. MASON:

H. R. 6301. A bill to supplement existing laws against unlawful restraints and monopolies, and for other purposes; to the Committee on the Judiciary.

By Mr. RANDOLPH:

H. R. 6302. A bill to authorize the payment of compensation for time lost in the case of certain veteran and nonveteran employees of the United States restored to active duty after disapproval of charges against them; to the Committee on the Civil Service.

By Mr. FLANNAGAN:

H. R. 6303. A bill to amend the provisions of the Agricultural Adjustment Act relating to marketing agreements and orders; to the Committee on Agriculture.

By Mrs. ROGERS of Massachusetts:

H. R. 6304. A bill to authorize the furnishing of motor equipment to seriously disabled veterans, and for other purposes; to the Committee on World War Veterans' Legislation.

By Mr. MAY:

H. R. 6305. A bill to make permanent the provisions of the act of July 11, 1941, prohibiting prostitution in the vicinity of military and naval establishments; to the Committee on Military Affairs.

By Mr. ROE of New York:

H. R. 6306. A bill amending section 1, act of July 20, 1942 (56 Stat. 662; 10 U. S. C. 1423a); to the Committee on Military Affairs.

By Mr. GRANAHAN:

H. Res. 610. Resolution favoring a temporary peace agreement with Italy; to the Committee on Foreign Affairs.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. BARRETT of Pennsylvania:

H. R. 6307. A bill for the relief of Francesco D'Emilio; to the Committee on Claims.

By Mr. BEALL:

H. R. 6308. A bill for the relief of John F. Guthridge; to the Committee on Claims.

By Mrs. DOUGLAS of Illinois:

H. R. 6309. A bill for the relief of Rudolf Alt; to the Committee on Claims.

By Mrs. DOUGLAS of California:

H. R. 6310. A bill for the relief of Hsi Tseng Tsiang; to the Committee on Immigration and Naturalization.

By Mr. FARRINGTON:

H. R. 6311. A bill for the relief of Mitsuo Arita; to the Committee on Claims.

H. R. 6312. A bill for the relief of Yukiko Kimura; to the Committee on Immigration and Naturalization.

H. R. 6313. A bill for the relief of the estate of Yoshito Ota; to the Committee on Claims.

H. R. 6314. A bill for the relief of Dementia Camara, Mary Kapola Kaleikini, and John Kaleikini, Jr.; to the Committee on Claims.

ADMINISTRATIVE PROCEDURE ACT

REPORT

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

ON

S. 7

A BILL TO IMPROVE THE ADMINISTRATION
OF JUSTICE BY PRESCRIBING FAIR
ADMINISTRATIVE PROCEDURE



MAY 3, 1946.—Committed to the Committee of the Whole House
on the State of the Union and ordered to be printed

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1946

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ADMINISTRATIVE PROCEDURE ACT

MAY 3, 1946.—Committed to the Committee of the Whole House on the State of the Union and Ordered to be printed

Mr. WALTER, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 7]

The Committee on the Judiciary, to whom was referred the bill (S. 7) to improve the administration of justice by prescribing fair administrative procedure, having considered the same, report the bill favorably to the House, with an amendment, with the recommendation that, as amended, the bill do pass.

The committee amendment is as follows:

Strike out all of the bill after the enacting clause and insert in lieu thereof the following:

TITLE

SECTION 1. This Act may be cited as the "Administrative Procedure Act".

DEFINITIONS

SEC. 2. As used in this Act—

(a) AGENCY.—"Agency" means each authority (whether or not within or subject to review by another agency) of the Government of the United States other than Congress, the courts, or the governments of the possessions, Territories, or the District of Columbia. Nothing in this Act shall be construed to repeal delegations of authority as provided by law. Except as to the requirements of section 3, there shall be excluded from the operation of this Act (1) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them, (2) courts martial and military commissions, (3) military or naval authority exercised in the field in time of war or in occupied territory, or (4) functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947, and the functions conferred by the following statutes: Selective Training and Service Act of 1940; Contract Settlement Act of 1944; Surplus Property Act of 1944.

(b) PERSON AND PARTY.—"Person" includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies. "Party" includes any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any agency proceeding; but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes.

(c) **RULE AND RULE MAKING.**—"Rule" means the whole or any part of any agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of any agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor, or of valuations, costs, or accounting, or practices bearing upon any of the foregoing. "Rule making" means agency process for the formulation, amendment, or repeal of a rule.

(d) **ORDER AND ADJUDICATION.**—"Order" means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of any agency in any matter other than rule making but including licensing. "Adjudication" means agency process for the formulation of an order.

(e) **LICENSE AND LICENSING.**—"License" includes the whole or part of any agency permit, certificate, approval, registration, charter, membership, statutory exemption, or other form of permission. "Licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license.

(f) **SANCTION AND RELIEF.**—"Sanction" includes the whole or part of any agency (1) prohibition, requirement, limitation, or other condition affecting the freedom of any person; (2) withholding of relief; (3) imposition of any form of penalty or fine; (4) destruction, taking, seizure, or withholding of property; (5) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees; (6) requirement, revocation, or suspension of a license; or (7) taking of other compulsory or restrictive action. "Relief" includes the whole or part of any agency (1) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy; (2) recognition of any claim, right, immunity, privilege, exemption, or exception; or (3) taking of any other action upon the application or petition of, and beneficial to, any person.

(g) **AGENCY PROCEEDING AND ACTION.**—"Agency proceeding" means any agency process as defined in subsections (c), (d), and (e) of this section. "Agency action" includes the whole or part of every agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.

PUBLIC INFORMATION

SEC. 3. Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of an agency—

(a) **RULES.**—Every agency shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organization including delegations by the agency of final authority and the established places at which, and methods whereby, the public may secure information or make submittals or requests; (2) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations; and (3) substantive rules adopted as authorized by law and statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public, but not rules addressed to and served upon named persons in accordance with law. No person shall in any manner be required to resort to organization or procedure not so published.

(b) **OPINIONS AND ORDERS.**—Every agency shall publish or, in accordance with published rule, make available to public inspection all final opinions or orders in the adjudication of cases (except those required for good cause to be held confidential and not cited as precedents) and all rules.

(c) **PUBLIC RECORDS.**—Save as otherwise required by statute, matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found.

RULE MAKING

SEC. 4. Except to the extent that there is involved (1) any military, naval, or foreign affairs function of the United States or (2) any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts—

(a) **NOTICE.**—General notice of proposed rule making shall be published in the Federal Register (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law)

and shall include (1) a statement of the time, place, and nature of public rule-making proceedings; (2) reference to the authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved. Except where notice or hearing is required by statute, this subsection shall not apply to interpretative rules, general statements of policy, rules of agency organization, procedure, or practice, or in any situation in which the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(b) PROCEDURES.—After notice required by this section, the agency shall afford interested persons an opportunity to participate in the rule making through submission of written data, views, or argument with or without opportunity to present the same orally in any manner; and, after consideration of all relevant matter presented, the agency shall incorporate in any rules adopted a concise general statement of their basis and purpose. Where rules are required by statute to be made on the record after opportunity for an agency hearing, the requirements of sections 7 and 8 shall apply in place of the provisions of this subsection.

(c) EFFECTIVE DATES.—The required publication or service of any substantive rule (other than one granting or recognizing exemption or relieving restriction or interpretative rules and statements of policy) shall be made not less than thirty days prior to the effective date thereof except as otherwise provided by the agency upon good cause found and published with the rule.

(d) PETITIONS.—Every agency shall accord any interested person the right to petition for the issuance, amendment, or repeal of a rule.

ADJUDICATION

SEC. 5. In every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved (1) any matter subject to a subsequent trial of the law and the facts de novo in any court; (2) the selection or tenure of an officer or employee of the United States other than examiners appointed pursuant to section 11; (3) proceedings in which decisions rest solely on inspections, tests, or elections; (4) the conduct of military, naval, or foreign-affairs functions; (5) cases in which an agency is acting as an agent for a court; and (6) the certification of employee representatives—

(a) NOTICE.—Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, and nature thereof; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) the matters of fact and law asserted. In instances in which private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the times and places for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(b) PROCEDURE.—The agency shall afford all interested parties opportunity for (1) the submission and consideration of facts, argument, offers of settlement, or proposals of adjustment where time, the nature of the proceeding, and the public interest permit and (2) to the extent that the parties are unable so to determine any controversy by consent, hearing, and decision upon notice and in conformity with sections 7 and 8.

(c) SEPARATION OF FUNCTIONS.—The same officers who preside at the reception of evidence pursuant to section 7 shall make the recommended decision or initial decision required by section 8 except where such officers become unavailable to the agency. Save to the extent required for the disposition of ex parte matters as authorized by law, no such officer shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate; nor shall such officer be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency. No officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency in any case shall, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 8 except as witness or counsel in public proceedings. This subsection shall not apply in determining applications for initial licenses or to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; nor shall it be applicable in any manner to the agency or any member or members of the body comprising the agency.

(d) **DECLARATORY ORDERS.**—The agency is authorized in its sound discretion, with like effect as in the case of other orders, to issue a declaratory order to terminate a controversy or remove uncertainty.

ANCILLARY MATTERS

SEC. 6. Except as otherwise provided in this Act—

(a) **APPEARANCE.**—Any person compelled to appear in person before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. Every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in any agency proceeding. So far as the orderly conduct of public business permits, any interested person may appear before any agency or its responsible officers or employees for the presentation, adjustment, or determination of any issue, request, or controversy in any proceeding (interlocutory, summary, or otherwise) or in connection with any agency function. Every agency shall proceed with reasonable dispatch to conclude any matter presented to it except that due regard shall be had for the convenience and necessity of the parties or their representatives. Nothing herein shall be construed either to grant or to deny to any person who is not a lawyer the right to appear for or represent others before any agency or in any agency proceeding.

(b) **INVESTIGATIONS.**—No process, requirement of a report, inspection, or other investigative act or demand shall be issued, made, or enforced in any manner or for any purpose except as authorized by law. Every person compelled to submit data or evidence shall be entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

(c) **SUBPENAS.**—Agency subpoenas authorized by law shall be issued to any party upon request and, as may be required by rules of procedure, upon a statement or showing of general relevance and reasonable scope of the evidence sought. Upon contest the court shall sustain any such subpoena or similar process or demand to the extent that it is found to be in accordance with law and, in any proceeding for enforcement, shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of contumacious failure to comply.

(d) **DENIALS.**—Prompt notice shall be given of the denial in whole or in part of any written application, petition, or other request of any interested person made in connection with any agency proceeding. Except in affirming a prior denial or where the denial is self-explanatory, such notice shall be accompanied by a simple statement of procedural or other grounds.

HEARINGS

SEC. 7. In hearings which section 4 or 5 requires to be conducted pursuant to this section—

(a) **PRESIDING OFFICERS.**—There shall preside at the taking of evidence (1) the agency, (2) one or more members of the body which comprises the agency, or (3) one or more examiners appointed as provided in this Act; but nothing in this Act shall be deemed to supersede the conduct of specified classes of proceedings in whole or part by or before boards or other officers specially provided for by or designated pursuant to statute. The functions of all presiding officers and of officers participating in decisions in conformity with section 8 shall be conducted in an impartial manner. Any such officer may at any time withdraw if he deems himself disqualified; and, upon the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification of any such officer, the agency shall determine the matter as a part of the record and decision in the case.

(b) **HEARING POWERS.**—Officers presiding at hearings shall have authority, subject to the published rules of the agency and within its powers, to (1) administer oaths and affirmations, (2) issue subpoenas authorized by law, (3) rule upon offers of proof and receive relevant evidence, (4) take or cause depositions to be taken whenever the ends of justice would be served thereby, (5) regulate the course of the hearing, (6) hold conferences for the settlement or simplification of the issues by consent of the parties, (7) dispose of procedural requests or similar matters, (8) make decisions or recommend decisions in conformity with

section 8, and (9) to take any other action authorized by agency rule consistent with this Act.

(c) **EVIDENCE.**—Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses any agency may, where the interest of any party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(d) **RECORD.**—The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision in accordance with section 8 and, upon payment of lawfully prescribed costs, shall be made available to the parties. Where any agency decision rests on official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the contrary.

DECISIONS

SEC. 8. In cases in which a hearing is required to be conducted in conformity with section 7—

(a) **ACTION BY SUBORDINATES.**—In cases in which the agency has not presided at the reception of the evidence, the officer who presided (or, in cases not subject to subsection (c) of section 5, any other officer or officers qualified to preside at hearings pursuant to section 7) shall initially decide the case or the agency shall require (in specific cases or by general rule) the entire record to be certified to it for initial decision. Whenever such officers make the initial decision and in the absence of either an appeal to the agency or review upon motion of the agency within time provided by rule, such decision shall without further proceedings then become the decision of the agency. On appeal from or review of the initial decisions of such officers the agency shall, except as it may limit the issues upon notice or by rule, have all the powers which it would have in making the initial decision. Whenever the agency makes the initial decision without having presided at the reception of the evidence, such officers shall first recommend a decision except that in rule making or determining applications for initial licenses (1) in lieu thereof the agency may issue a tentative decision or any of its responsible officers may recommend a decision or (2) any such procedure may be omitted in any case in which the agency finds upon the record that due and timely execution of its function imperatively and unavoidably so requires.

(b) **SUBMITTALS AND DECISIONS.**—Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings or conclusions. The record shall show the ruling upon each such finding, conclusion, or exception presented. All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof.

SANCTIONS AND POWERS

SEC. 9. In the exercise of any power or authority—

(a) **IN GENERAL.**—No sanction shall be imposed or substantive rule or order be issued except within jurisdiction delegated to the agency and as authorized by law.

(b) **LICENSES.**—In any case in which application is made for a license required by law the agency, with due regard to the rights or privileges of all the interested parties or adversely affected persons and with reasonable dispatch, shall set and complete any proceedings required to be conducted pursuant to sections 7 and 8

of this Act or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, no withdrawal, suspension, revocation, or annulment of any license shall be lawful unless, prior to the institution of agency proceedings therefor, facts or conduct which may warrant such action shall have been called to the attention of the licensee by the agency in writing and the licensee shall have been accorded opportunity to demonstrate or achieve compliance with all lawful requirements. In any case in which the licensee has, in accordance with agency rules, made timely and sufficient application for a renewal or a new license, no license with reference to any activity of a continuing nature shall expire until such application shall have been finally determined by the agency.

JUDICIAL REVIEW

SEC. 10. Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—

(a) **RIGHT OF REVIEW.**—Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

(b) **FORM AND VENUE OF ACTION.**—The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. Agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.

(c) **REVIEWABLE ACTS.**—Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final shall be final for the purposes of this subsection whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule and provides that the action meanwhile shall be inoperative) for an appeal to superior agency authority.

(d) **INTERIM RELIEF.**—Pending judicial review any agency is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, every reviewing court (including every court to which a case may be taken on appeal from or upon application for certiorari or other writ to a reviewing court) is authorized to issue all necessary and appropriate process to postpone the effective date of any agency action or to preserve status or rights pending conclusion of the review proceedings.

(e) **SCOPE OF REVIEW.**—So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

EXAMINERS

SEC. 11. Subject to the civil-service and other laws to the extent not inconsistent with this Act, there shall be appointed by and for each agency as many qualified and competent examiners as may be necessary for proceedings pursuant to sections 7 and 8, who shall be assigned to cases in rotation so far as practicable

and shall perform no duties inconsistent with their duties and responsibilities as examiners. Examiners shall be removable by the agency in which they are employed only for good cause established and determined by the Civil Service Commission (hereinafter called the Commission) after opportunity for hearing and upon the record thereof. Examiners shall receive compensation prescribed by the Commission independently of agency recommendations or ratings and in accordance with the Classification Act of 1923, as amended, except that the provisions of paragraphs (2) and (3) of subsection (b) of section 7 of said Act, as amended, and the provisions of section 9 of said Act, as amended, shall not be applicable. Agencies occasionally or temporarily insufficiently staffed may utilize examiners selected by the Commission from and with the consent of other agencies. For the purposes of this section, the Commission is authorized to make investigations, require reports by agencies, issue reports, including an annual report to the Congress, promulgate rules, appoint such advisory committees as may be deemed necessary, recommend legislation, subpoena witnesses or records, and pay witness fees as established for the United States courts.

CONSTRUCTION AND EFFECT

SEC. 12. Nothing in this Act shall be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. If any provision of this Act or the application thereof is held invalid, the remainder of this Act or other applications of such provision shall not be affected. Every agency is granted all authority necessary to comply with the requirements of this Act through the issuance of rules or otherwise. No subsequent legislation shall be held to supersede or modify the provisions of this Act except to the extent that such legislation shall do so expressly. This Act shall take effect three months after its approval except that sections 7 and 8 shall take effect six months after such approval, the requirement of the selection of examiners pursuant to section 11 shall not become effective until one year after such approval, and no procedural requirement shall be mandatory as to any agency proceeding initiated prior to the effective date of such requirement.

II. LEGISLATIVE HISTORY

For more than 10 years this legislation has been under consideration. Certainly no measure of like character has had the painstaking and detailed study and drafting. Both the legislative and executive branches have participated, and private interests of every kind have had an opportunity to present their views. In the legislative branch there have been four major proposals for the creation of an administrative court, and at least eight for the regulation of administrative procedure. Two important studies were conducted in the executive branch under the late President Franklin D. Roosevelt—each resulting in reports to Congress with legislative recommendations. Private individuals and organizations have made innumerable studies and recommendations. While various proposals have been made over the years, the continuous line of development leading to the present bill is clear and illuminating.

1937 Report of President's Committee on Administrative Management.—The growth and intensification of administrative regulation of private enterprise and other phases of American life had moved President Roosevelt early in his administration to appoint a committee to study administrative methods, functioning, and organization. Although that committee approached the problem from the standpoint of executive branch management, it was soon deeply involved in the essential public processes of administrative regulation. It issued numerous studies and an extensive report (*Report With Special Studies*, 1937), which President Roosevelt transmitted to Congress with his

endorsement and the statement that it was "a great document of permanent importance" (p. iii). At that time he also took occasion to remark that the practice of creating administrative agencies—

who perform administrative work in addition to judicial work, threatens to develop a "fourth branch" of the Government for which there is no sanction in the Constitution.

To which the committee added (p. 40):

There is a conflict of principle involved in their make-up and functions. * * * They are vested with duties of administration * * * and at the same time they are given important judicial work. * * * The evils resulting from this confusion of principles are insidious and far reaching. * * * Pressures and influences properly enough directed toward officers responsible for formulating and administering policy constitute an unwholesome atmosphere in which to adjudicate private rights. But the mixed duties of the commissions render escape from these subversive influences impossible. Furthermore, the same men are obliged to serve both as prosecutors and as judges. This not only undermines judicial fairness; it weakens public confidence in that fairness. Commission decisions affecting private rights and conduct lie under the suspicion of being rationalizations of the preliminary findings which the Commission, in the role of prosecutor, presented to itself.

The foregoing statement reflects a widespread feeling, which has been greatly extended by the expansion of administrative controls during the subsequent war years.

The problem has been how to deal with the situation, in our complex governmental set-up, without unduly interfering with necessary governmental operations. President Roosevelt's committee recommended a drastic reform by which every agency exercising mixed functions would be divided into an administrative and judicial section. The latter, although it might be "in" a department, was to be wholly independent of the former and of executive control. While subsequent proposals (except for the minority of the later Attorney General's Committee on Administrative Procedure, discussed hereinafter) have not suggested such a complete separation of functions and the present bill does not go so far, the recommendations of the President's Committee on Administrative Management are—as President Roosevelt said in his message to the Congress—of permanent importance.

1938 Senate hearings.—The Senate Judiciary Committee in 1938 held hearings on the proposal for the creation of an administrative court; and it issued as a committee print an elaborate study of administrative powers conferred by statute up to that time (S. 3676, 75th Cong.). However, such a proposition presents serious problems and some deficiencies. It means the creation of a special court or courts, in derogation of the regular courts with which people are familiar and which the Constitution directs the Congress to provide for the redress of all grievances and settlement of disputes. There may also be some limitations upon the functions which could be conferred upon a court. It could not, for example, exercise the rule-making power without undertaking to supplant the administrative arm entirely. Moreover, that proposal fails to reach and control the administrative process at its source. There is need for a simple and standard plan of administrative procedure, together with the statement of legal and enforceable guides for administrative officers and agents in their daily operations. In short, an important object of any legislation in this field is not only to provide judicial redress but to assure administrative fairness in the beginning so that litigation may become unnecessary.

1939-40 Walter-Logan bill.—S. 915, the Walter-Logan administrative procedure bill, was favorably reported to the Senate in 1939 (S. Rept. No. 442, 76th Cong., 1st sess.). Although a different bill is now reported to the House of Representatives, the following passages of that report are well worth quoting (pp. 9-10):

Unfortunately the statutes providing for hearings before the so-called independent agencies of the Federal Government as well as those providing for the conduct of the affairs of the single-headed agencies, do not provide for uniform procedure for * * * hearings or for a uniform method and scope of judicial review. All argument that such uniformity is neither possible or desirable is answered by the fact that uniformity has been found possible and desirable for all classes of both equity and law actions in the courts exercising the whole of the judicial power of the Federal Government. It would seem to require no argument to demonstrate that the administrative agencies, exercising but a fraction of the judicial power may likewise operate under uniform rules of practice and procedure and that they may be required to remain within the terms of the law as to the exercise of both quasi-legislative and quasi-judicial power.

The results of the lack of uniform procedure for the exercise of quasi-judicial power by the administrative agencies have been at least threefold: (1) The respective administrative agencies give little heed to, and are little assisted by, the decisions of other administrative agencies or by the decisions of the courts applicable to such agencies; (2) the courts are placed at considerable disadvantage because they must verify the basic statutes of all decisions relating to other administrative agencies which are cited to them, thus slowing up the writing of opinions in particular cases; and (3) individuals and their attorneys are at a disadvantage in the presentation of their administrative appeals, with the result that there is a tendency to emphasize the importance of the judiciary in the administrative process.

In fact, the present situation of indescribable confusion is due to the fact that the Congress has ignored the development of the administrative process prior to 1861; that since such time the Congress has created administrative agencies without regard to any uniformity of the judicial review provisions and without regard to the procedure developed and proven prior to that time; and that the law schools have placed undue emphasis on the pathological aspects of administrative procedure rather than upon the statutes and the administrative processes. Added to all this has been the constantly growing complexity of the Federal Government and the resulting lack of training of most lawyers and businessmen therein.

Furthermore the statutes, commencing with the Interstate Commerce Act, have made no provision whatever for improvement of the administrative process and rarely have these statutes attempted to prescribe, even in a general way, the scope of judicial review. The result has been that the administrative agencies and the courts have been required to work out the procedure from case to case with unnecessary fumbling in the administrative process and with unnecessary criticisms of the courts when they have attempted—not altogether with success—in their decisions to lay down general rules of trial and appellate procedure.

The Judiciary Committee of the House of Representatives reported the similar bill (H. R. 6324) with some amendments during the same year (H. Rept. No. 1149, 76th Cong., 1st sess.).

Referring to President Roosevelt's program of governmental reorganization which followed the report of his Committee on Administrative Management, described above, the Committee on the Judiciary of the House of Representatives said in reporting the bill (p. 2):

Procedures vary as among the several agencies and to some extent even among the principal officers or employees of the same agencies. It is practically impossible for a Member of the Congress, much less an individual citizen, to find his way among these many agencies or to locate the particular officer or employee in any of the agencies with whom any particular problem should be discussed with a view to settlement.

This condition of affairs has been in the making for many years and is not something which has come upon us within the past few years, though it might be candidly admitted that the condition has grown worse within the past few years in the attempts that have been made to meet serious economic and social problems.

Very obviously these administrative agencies cannot be abolished, though without doubt there are many of us who yearn for the comparatively simple life

of yesteryear when these agencies of Government were not needed and did not exist. Practically all of these agencies, in their administration of the various and sundry statutes, must issue rules, make investigations, conduct hearings, and decide controversies, and there is no practicable and feasible method which could be adopted by which there could be segregated these quasi-legislative and quasi-judicial functions from the purely administrative functions without destroying the usefulness of such agencies.

At the same time, the law must provide that the governors shall be governed and the regulators shall be regulated, if our present form of government is to endure.

Early in 1940 there was issued an elaborately annotated copy of the bill, explaining its purposes and the derivation of its provisions (S. Doc. No. 145, 76th Cong., 3d sess.).

Meanwhile the President had directed the appointment of a committee to make further studies and recommendations, as described under the next heading of this report. Congress nevertheless passed the Walter-Logan bill. In vetoing it President Roosevelt said (H. Doc. No. 986, 76th Cong., 3d sess., pp. 1, 3-4):

The objective of the bill is professedly the assurance of fairness in administrative proceedings. With that objective there will be universal agreement. The promotion of expeditious, orderly, and sensible procedure in the conduct of public affairs is a purpose which commends itself not only to the Congress and the courts, but to the executive departments and administrative agencies themselves.

* * * * *

I am, of course, not unaware that improvement in the administrative process is as much the duty of those concerned with it as the improvement of court procedure ought to be a duty of the legal profession.

Recognizing this, more than a year ago I directed the Attorney General to select a committee of eminent lawyers, jurists, scholars, and administrators to review the entire administrative process in the various departments of the executive Government and to recommend improvements, including the suggestion of any needed legislation. For over a year such a committee has been taking up in detail each of the several typical administrative agencies and has been holding prolonged sessions, hearings, inquiries, and discussions. Its task has proved unexpectedly complex. The objective of this committee, however, is not to hamper administrative tribunals but to suggest improvements to make the process more workable and more just and to avoid confusions and uncertainties and litigations. I should desire to await their report and recommendations before approving any measure in this complicated field. In this thought I believe most Americans will agree. The report and recommendations will be transmitted to the Congress in a few weeks.

The committee to which the President referred had been at work for more than a year, had made an interim report, and had issued studies of the work of particular agencies.

The present bill must be distinguished from the Walter-Logan bill in several essential respects. Unlike that bill it differentiates the several types of rules. It requires no agency hearings in connection with either regulations or adjudications unless statutes already do so in particular cases. Where statutory hearings are otherwise provided, it fills in some of the essential requirements; and it provides for a special class of semi-independent subordinate hearing officers. It includes several types of incidental procedures. It confers numerous procedural rights. It limits administrative penalties. It contains comprehensive provisions for judicial review for the redress of any legal wrong. And, since it is drawn entirely upon a functional basis, it contains no exemptions of agencies as such. One of the main recommendations of the later Attorney General's Committee on Administrative Procedure—which is hereinafter discussed—was that “an important and far-reaching defect in the field of administrative law has

been a simple lack of adequate public information concerning its substance and procedure" (S. Doc. No. 8, 77th Cong., p. 25). The Walter-Logan bill made no provision in that respect, whereas the first operative section of the present bill spells out the requirements of public information in considerable detail (sec. 3). This is an important provision of the present bill. The Walter-Logan bill changed the present examiner system by providing for employee boards to hear cases in departments and that examiners could hear cases in independent agencies, but that in independent agencies either boards or three members should rehear cases on the petition of the party involved before a decision could be entered (sec. 4 (a), (b), (d)). The present bill, on the other hand, does not change the operation of the examiner system nor does it provide that examiners should supersede the functions of other types of hearing officers provided by statute (sec. 7 (a)).

1941 Final Report of Attorney General's Committee on Administrative Procedure.—In December 1938 the Attorney General in a letter to President Roosevelt had reviewed the progress made in securing simplified and uniform rules of procedure for Federal court procedure, stated that "there is need for procedural reform in the wide and growing field of administrative law," and recommended the creation of an appropriate body to make the necessary studies and recommendations for congressional consideration (S. Doc. No. 8, 77th Cong., 1st sess., p. 251). The President had agreed by letter of February 16, 1939 (p. 252). The committee had made an interim report in January 1940, setting forth mainly the comprehensive scope of its program of studies (p. 254).

The agencies studied were the following (pp. 3-4):

- The Department of Agriculture (Agricultural Marketing Service; Commodity Exchange Administration; Bureau of Animal Industry; Bureau of Entomology and Plant Quarantine; Surplus Marketing Administration; and Sugar Division).
- The Department of Commerce (Civil Aeronautics Administration; Bureau of Marine Inspection and Navigation; and Patent Office).
- The Department of the Interior (Bituminous Coal Division; General Land Office; Grazing Service; Office of Indian Affairs; Bureau of Fisheries; and Bureau of Biological Survey).
- The Department of Justice (Immigration and Naturalization Service).
- The Department of Labor (Division of Public Contracts; Wage and Hour Division; and Children's Bureau).
- The Post Office Department (fraud orders and second-class mailing privileges).
- The Department of State (Passport Division, Visa Division, and the Division of Controls, having to do with the international traffic in arms and with the supervision and administration of neutrality laws).
- The Department of the Treasury (Bureau of Internal Revenue [into which had been absorbed the Federal Alcohol Administration]; Processing Tax Board of Review; Bureau of the Comptroller of the Currency; and the Bureau of Customs).
- The War Department (Office of the Chief of Engineers; the Selective Service Act was enacted after the completion of these studies).
- The Commodity Exchange Commission.
- The Federal Communications Commission.
- The Federal Deposit Insurance Corporation.
- The Federal Home Loan Bank Board.
- The Federal Power Commission.
- The Federal Reserve System.
- The Federal Security Agency (Social Security Board, Public Health Service, and the Food and Drug Administration).
- The Federal Trade Commission.
- The Interstate Commerce Commission.
- The National Labor Relations Board.
- The National Mediation Board.

The National Railroad Adjustment Board.

The Railroad Retirement Board.

The Securities and Exchange Commission.

The United States Board of Tax Appeals.

The United States Employees' Compensation Commission (including the deputy commissioners).

The United States Maritime Commission.

The United States Tariff Commission.

The Veterans' Administration.

The committee's investigators examined agency records and procedures, it held executive hearings, and then written studies were issued. These usually embraced a first mimeographed study, a revision thereof, and finally the issuance of 27 printed monographs each embodying the results for one or more agencies, which became Senate documents (S. Doc. No. 186, 76th Cong., 3d sess., pts. 1-13; and S. Doc. No. 10, 77th Cong., 1st sess., pts. 1-14). They were widely distributed. The committee also held public hearings. Defects of the procedures of particular agencies are also summarized at length in chapter IX of the committee's final report.

There are 474 pages in the committee's final report, of which only the first 127 are the report proper. The remainder is made up of minority views (pp. 203-250) and appendixes. See *Administrative Procedure in Government Agencies—Report of the Committee on Administrative Procedure, Appointed by the Attorney General at the Request of the President, to Investigate the Need for Procedural Reform in Various Administrative Tribunals and To Suggest Improvements Therein* (S. Doc. No. 8, 77th Cong., 1st sess., dated January 22, 1941).

The published documents relating to the present bill, notably the Senate Judiciary Committee print of June 1945 on S. 7 which collates in parallel columns the provisions of the present bill with the pertinent portions of the final report of the Attorney General's Committee on Administrative Procedure, indicate the care with which the recommendations of that committee have been studied in framing the present bill. While it follows generally the views of good administrative practice as expressed by the whole of that committee, it differs in several important respects. It provides that agencies may choose whether their examiners shall make the initial decision or merely recommend a decision, whereas the Attorney General's committee made a decision by examiners mandatory. It provides some general limitations upon administrative powers and sanctions, particularly in the rigorous field of licensing, while the Attorney General's committee did not touch upon the subject. It relies upon independence, salary security, and tenure during good behavior of examiners within the framework of the civil service, whereas the Attorney General's committee favored short-term appointments approved by a special "Office of Administrative Procedure."

As a matter of drafting, the actual language of the present bill has had vastly more consideration and participation by all parties concerned than the bills presented in 1941 by the majority and minority of the Attorney General's Committee on Administrative Procedure. An entire year has been spent alone in redrafting the original S. 7 (H. R. 1203) of the present Congress, as hereinafter more fully explained. Its predecessor, S. 2030 (H. R. 5081), of the previous Congress, had passed through a similar process.

Senate hearings.—The majority and minority bills growing immediately out of the work of the Attorney General's committee were

introduced in Congress along with revised versions of other bills. A distinguished subcommittee of the Senate Committee on the Judiciary (composed of Senator Hatch as chairman and Senators O'Mahoney, Chandler, Austin, and Danaher) then held hearings in April, May, June, and July of 1941, which were published in three parts and an appendix. (See hearings on S. 674, 675, and 918.) By far the greater part of the hearings were devoted to the oral or written statements, or both, of representatives of governmental agencies, among them the following:

- Agriculture Department
- Attorney General
- Bituminous Coal Division
- Bonneville Power Administration
- Bureau of Marine Inspection and Navigation
- Bureau of Reclamation
- Civil Aeronautics Administration
- Civil Aeronautics Board
- Civil Service Commission
- Export Control Administrator
- Federal Communications Commission
- Federal Deposit Insurance Corporation
- Federal Power Commission
- Federal Reserve System
- Federal Security Agency
- Federal Trade Commission
- Fish and Wildlife Service
- Grazing Service
- General Land Office
- Immigration and Naturalization Service
- Interior Department
- Interstate Commerce Commission
- Justice Department
- Labor Department
- National Labor Relations Board
- National Railroad Retirement Board
- Office of Indian Affairs
- Patent Office
- Post Office Department
- Securities and Exchange Commission
- Tariff Commission
- Tennessee Valley Authority
- Treasury Department
- Veterans' Administration
- War Department

In addition, the subcommittee heard or received the written statements of representatives of business, professional, labor, and agricultural organizations as well as members of the Attorney General's Committee on Administrative Procedure. The written statement submitted by the minority members of that committee summarizes most of the testimony and statements (pp. 1374-1401) and also presents a revision of their legislative recommendations (pp. 1402-1418).

It can be said fairly that no point raised by any agency in those very lengthy and detailed hearings has not been given full consideration in the drafting of the present bill, and indeed in almost every instance the present bill avoids the difficulties which Government agencies then feared. For example, in those hearings agencies protested mainly against limitations upon delegations of authority (p. 1378), but the present bill expressly states that "nothing in this Act shall be construed to repeal delegations of authority as provided by

law" (sec. 2 (a)). They feared any provision which might be construed to require them to issue rules or regulations in advance to meet every case (p. 1381), but apart from rules of organization and procedure the present bill requires the publication only of "substantive rules adopted as authorized by law and statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public" (sec. 3 (a)). Some agencies did not want hearings provided (pp. 1389-1398, 1394), and the present bill provides the details for hearings only where other statutes require a hearing. (See sec. 4 (b) and the introductory clause to sec. 5.) They wished power to make declaratory rulings to be so limited that parties would not have an absolute right to such a ruling in every case (p. 1392), and the present bill expressly confers the authority upon certain agencies to be exercised only in their "sound discretion" (sec. 5 (d)). Various agencies objected to any provision for the separation of functions in rule making (p. 1396), a suggestion which the present bill expressly carries even further because section 5 which contains the segregation provision does not apply to rule making and in subsection (c) makes additional exemptions.

1942-44.—In August 1941 the increasingly threatening international situation moved the Senate Judiciary Committee to postpone further consideration of the legislative proposals. The attack at Pearl Harbor occurred before the year was out. During the war years 1942-43 the subject was necessarily in abeyance; but war legislation, administration, and congressional investigations brought administrative processes more and more into prominence. In June 1944 new bills were introduced by the chairmen of the Senate and House Judiciary Committees (S. 2030 and H. R. 5081, 78th Cong., 2d sess.), and thereafter there was a good deal of discussion and activity in and out of the Government with respect to the form such legislation should take. The Attorney General, utilizing some of the staff of his former Committee on Administrative Procedure, had a voluminous analysis made of the new bill.

1945. The present bill.—With the opening of the present Seventy-ninth Congress, revised and simplified bills were introduced in January 1945 by the chairmen of the two Judiciary Committees as S. 7 and H. R. 1203. Both chairmen called upon administrative agencies to submit their further views and suggestions in writing. Written submittals were also received from private organizations and parties. These were analyzed and, with the aid of representatives of the Attorney General and interested private organizations, in May 1945 there was issued a Senate committee print setting forth in parallel columns the bill as introduced and a tentatively revised text. This was distributed to administrative agencies, and they again submitted comments and suggestions in writing.

Thereupon the Senate Judiciary Committee had its staff make a further analysis and issued in June 1945 a large committee print setting forth in four parallel columns the text of the bill as originally introduced, the tentatively revised text as previously published, a general explanation of provisions with references to the final report of the Attorney General's Committee on Administrative Procedure and other authorities, and a summary of agency and private views received in response to the first committee print.

At this point the full Committee on the Judiciary of the House of Representatives held hearings late in June. The House Committee on the Judiciary had kept in close touch with, and had participated fully in, the development of the bill; and it had also designated a subcommittee on the subject. Attorney General Biddle had previously indicated orally that he was prepared to recommend the enactment of an administrative procedure statute, and now indicated similarly that he was prepared to accept the draft proposed. He was, however, succeeded in office by Attorney General Tom C. Clark, who made some additions to the conference group representing the Attorney General. They entered upon 3 more months of discussions with interested Government agencies and undertook to screen and correlate views and suggestions received orally or in writing. Private parties and organizations also participated. By this time the issues had been narrowed to matters of language and expression. A final form of bill (see the revised Senate committee print dated October 5, 1945) was then submitted to and endorsed by the Attorney General by letters addressed to the committee chairmen of both Houses. (For the full text see S. Rept. No. 752, 79th Cong., 1st sess., pp. 37-38.)

Favorable recommendation of the Attorney General.—In his letter approving and recommending S. 7 as revised the Attorney General stated:

The goal toward which these efforts have been directed is, in my opinion, worth while. Despite difficulties of draftsmanship, I believe that over-all procedural legislation is possible and desirable. The administrative process is now well developed. It has been subject in recent years to the most intensive and informed study—by various congressional committees, by the Attorney General's Committee on Administrative Procedure, by organizations such as the American Bar Association, and by many individual practitioners and legal scholars. We have in general—as we did not have until fairly recently—the materials and facts at hand. I think the time is ripe for some measure of control and prescription by legislation. I cannot agree that there is anything inherent in the subject of administrative procedure, however complex it may be, which defies workable codification.

Since the original introduction of S. 7, I understand that opportunity has been afforded to public and private interests to study its provisions and to suggest amendments. The agencies of the Government primarily concerned have been consulted and their views considered. * * *

The bill appears to offer a hopeful prospect of achieving reasonable uniformity and fairness in administrative procedures without at the same time interfering unduly with the efficient and economical operation of the Government. Insofar as possible, the bill recognizes the needs of individual agencies by appropriate exemption of certain of their functions.

After reviewing the committee print, therefore, I have concluded that this Department should recommend its enactment.

A similar statement was delivered to the chairman of the Committee on the Judiciary of the House of Representatives at the same time.

Favorable report of the Senate Judiciary Committee.—On November 19, 1945, the Committee on the Judiciary of the Senate unanimously reported the bill as revised (S. Rept. No. 752, 79th Cong., 1st sess.). Its report states that (p. 1)—

There is a widespread demand for legislation to settle and regulate the field of Federal administrative law and procedure. The subject is not expressly mentioned in the Constitution, and there is no recognizable body of such law, as there is for the courts in the Judicial Code. There are no clearly recognized legal guides for either the public or the administrators. Even the ordinary operations of administrative agencies are often difficult to know. The Committee on the Judiciary is convinced that, at least in essentials, there should be some simple and standard plan of administrative procedure.

That report contains a somewhat more brief résumé of the legislative history (pp. 1-5) than is here set forth, a general statement as to the approach of the Senate committee (pp. 5-6), a comparison of the bill with the earlier Walter-Logan bill (p. 6), a comparison with the 1941 final report of the Attorney General's Committee on Administrative Procedure (pp. 6-7), a general statement as to the structure of the bill with a diagram (pp. 7-9), a detailed analysis of provisions (pp. 9-30), and some concluding general comments (pp. 30-31). Appendix A thereto is the Senate bill as reported. Appendix B is the letter of the Attorney General in full, together with the more detailed statement which accompanied it.

1946 Senate debate and passage.—On March 12, 1946, the bill came on the Senate floor for action. It was explained in detail. It passed on the same day without change and without an adverse vote.

Changes proposed by House Judiciary Committee.—The original S. 7, as heretofore stated, was also introduced in the House of Representatives as H. R. 1203 by Chairman Hatton W. Sumners of the Judiciary Committee. A half dozen other bills on the same subject had also been introduced in the House of Representatives. The revised S. 7 as reported by the Senate Judiciary Committee (and subsequently passed by the Senate) was introduced in the House of Representatives in December 1945 as H. R. 4941 by Chairman Sumners. The designated subcommittee of the House Judiciary Committee had followed all the proceedings and language of the bill. It considered many suggested changes and alternative proposals. As a result of its deliberations, certain corrections and clarifications were written into the text of the bill and introduced as H. R. 5988 by Chairman Francis E. Walter of the subcommittee. These changes are shown in appendix A of this report. They have been submitted for comment to the Attorney General, who has approved them as shown by his letter set forth as appendix B of this report. They are obviously desirable from the standpoint of all parties concerned. Accordingly, the text of H. R. 5988 has been substituted, as a committee amendment, for S. 7 as passed by the Senate.

III. THE SUBSTANCE OF THE BILL

Manifestly the bill does not unduly encroach upon the needs of any legitimate government operation, although it is of course operative according to its terms even if it should cause some administrative inconvenience or changes in procedure. It is brief, but necessarily not oversimplified. Functional classifications and exemptions have been made, but in no part of the bill is any agency exempted by name. The bill is meant to be operative "across the board" in accordance with its terms, or not at all. Where one agency has been able to demonstrate that it should be exempted, all like agencies have been exempted in general terms. (Sec. 2 (a)). Where one agency has shown that some particular operation should be exempted from any particular requirement, the same function in all agencies has been exempted. No agency has been favored by special treatment.

The bill is an outline of minimum essential rights and procedures. Agencies may fill in details, so long as they publish them. It affords private parties a means of knowing what their rights are and how they may protect them, while administrators are given a simple

framework upon which to base such operations as are subject to the provisions of the bill.

What the bill does in substance may be summarized under four headings: **1.** It provides that agencies must issue as rules certain specified information as to their organization and procedure, and also make available other materials of administrative law (sec. 3). **2.** It states the essentials of the several forms of administrative proceedings (secs. 4, 5, and 6) and the general limitations on administrative powers (sec. 9). **3.** It provides in more detail the requirements for administrative hearings and decisions in cases in which statutes require such hearings (secs. 7 and 8). **4.** It sets forth a simplified statement of judicial review designed to afford a remedy for every legal wrong (sec. 10).

The public information section is basic, because it requires agencies to take the initiative in informing the public. In stating the essentials of the different forms of administrative proceedings, the bill carefully distinguishes between the so-called legislative functions of administrative agencies (where they issue general regulations) and their judicial functions (in which they determine rights or liabilities in particular cases). It provides quite different procedures for the "legislative" and "judicial" functions of administrative agencies. In the "rule making" (that is, "legislative") function it provides that with certain exceptions agencies must publish notice and at least permit interested parties to submit their views in writing for agency consideration before the issuance of general regulations (sec. 4). No hearings are required by the bill unless statutes already do so in a particular case. Similarly, in "adjudications" (that is, the "judicial" function) no agency hearings are required unless statutes already do so, but in the latter case the mode of hearing and decision is prescribed (sec. 5). Where existing statutes require that either general regulations (called "rules" in the bill) or particularized adjudications (called "orders" in the bill) be made after agency hearing or opportunity for such hearing, then section 7 spells out the minimum requirements for such hearings, section 8 states how decisions shall be made thereafter, and section 11 provides for examiners to preside at hearings and make or participate in decisions.

While the administrative power and procedure provisions of sections 4 through 9 are law apart from court review, the provisions for judicial review afford parties a method of enforcing their rights in proper cases (sec. 10). However, it is expressly provided that the judicial-review provisions are not operative where statutes otherwise preclude judicial review or where agency action is by law committed to agency discretion.

The bill is so drafted that its several sections and subordinate provisions are closely knit. The operative provisions of the bill should be read apart from the purely formal provisions and minor functional distinctions. The definitions in section 2 are important, but they do not indicate the scope of the bill since the subsequent provisions make many functional distinctions and exceptions. The public-information provisions of section 3 are of the broadest application because, while some functions and some operations may not lend themselves to formal procedure, all administrative operations should as a matter of policy be disclosed to the public except as secrecy may

obviously be required or only internal agency "housekeeping" arrangements may be involved. Sections 4 and 5 prescribe the basic requirements for the making of rules and the adjudication of particular cases. In each case, where other statutes require opportunity for an agency hearing, sections 7 and 8 set forth the minimum requirements for such hearings and the agency decisions thereafter while section 11 provides for the appointment and tenure of examiners who may participate. Section 6 prescribes the rights of private parties in a number of miscellaneous respects which may be incidental to rule making, adjudication, or the exercise of any other agency authority. Section 9 limits sanctions, and section 10 provides for judicial review.

A diagram of the bill is to be found at pages 28-29 of this report.

IV. EXPLANATION OF PROVISIONS

In the following explanation, under each section heading there appears an italicized synopsis of the provision and a paragraph or more of analysis or comment. The chart on pages 28 and 29 provides a diagrammed synopsis of the bill. The full bill is reproduced as appendix A hereto, which also shows the clarifications it makes in the similar Senate bill.

SECTION 1. TITLE

It is provided that the measure may be cited as the "Administrative Procedure Act."

As a reading of the bill will demonstrate, it is designed to provide for publicity of information, fairness in administrative operation, and adequacy of judicial review. The purpose of the bill is to assure that the administration of government through administrative officers and agencies shall be conducted according to established and published procedures which adequately protect the private interests involved, the making of only reasonable and authorized regulations, the settlement of disputes in accordance with the law and the evidence, the impartial conferring of authorized benefits or privileges, and the effectuation of the declared policies of Congress in full.

SECTION 2. DEFINITIONS

The definitions apply to the remainder of the bill.

The definitions simplify the language of the remaining sections. They are necessarily broad. Save as exceptions are made from the term "agency" in section 2 (a), this section on definitions is not intended to make all the necessary exceptions; those are to be found in the remaining sections of the bill as appropriate.

SECTION 2 (A). "AGENCY"

The word "agency" is defined by excluding legislative, judicial, and territorial authorities and by including any other "authority" whether or not within or subject to review by another agency. The bill is not to be construed to repeal delegations of authority provided by law. Expressly exempted from the term "agency," except for the public-information requirements of section 3, are (1) agencies composed of representatives of

parties or of organizations of parties and (2) defined war authorities including civilian authorities functioning under temporary or named statutes.

Whoever has the authority is an agency, whether within another agency or in combination with other persons. In other words agencies, necessarily, cannot be defined by mere form such as departments, boards, etc. If agencies were defined by form rather than by the criterion of authority, it might result in the unintended inclusion of mere "housekeeping" functions or the exclusion of those who have the real power to act.

Although delegations of authority otherwise lawful are expressly not affected as shown by the second sentence of the section, that does not mean that the examiner system or other requirements provided by the bill may be avoided.

Agencies composed in whole or in part of representatives of all the parties or organizations of parties are exempted because they do not lend themselves to the adjudicative procedures set out in the remaining sections of the bill. This excludes from all but the public-information provisions of section 3 such agencies as the National Railroad Adjustment Board and the Railroad Retirement Board. Other boards so composed under the Railway Labor Act or like statutes would also be exempt. In such cases the exclusion from the bill is total, save for section 3.

The exclusion of war functions is self-explanatory. They are rarely required to be exercised upon statutory hearing, with which much of the remainder of the bill is concerned, and they are rapidly liquidating. But they are subject to the public information requirements of section 3. "Present hostilities" means those connected with the war brought on at Pearl Harbor in December 1941.

SECTION 2 (B). "PERSON" AND "PARTY"

"Person" is defined to include specified forms of organizations other than agencies. "Party" is defined to include anyone named, or admitted or seeking and entitled to be admitted, as a party in any agency proceeding except that nothing in the subsection is to be construed to prevent an agency from admitting anyone as a party for limited purposes.

The definition of person includes both individuals and any form of public or private organization other than Federal agencies, because the latter are separately defined in section 2 (a) and so identified throughout the remainder of the bill. The practice of agencies to admit persons as parties in proceedings "for limited purposes" does not of course authorize an agency to ignore or prejudice the rights of the true or full parties to a proceeding.

SECTION 2 (C). "RULE" AND "RULE MAKING"

"Rule" is defined as any agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law, policy, organization, procedure, or practice requirements and includes any prescription for the future of rates, wages, financial structures, etc. "Rule making" means agency process for the formulation, amendment, or repeal of a rule.

"Rules" are often called "regulations" or "general regulations." The definition is important because it determines whether section 4 rather than section 5 applies to a regulatory operation. The specification of some of the activities that are rule making is included to illustrate and to embrace them in the definition beyond question. "Rules" formally prescribe a course of conduct for the future rather than pronounce past or existing rights or liabilities. Rule making is exempted from some of the general requirements of sections 7 and 8 relating to hearings and decisions.

SECTION 2 (D). "ORDER" AND "ADJUDICATION"

"Order" means the final disposition of any matter, other than rule making but including licensing and whether or not affirmative, negative, injunctive, or declaratory in form. "Adjudication" means agency process for the formulation of an order.

The term "order" is essentially and necessarily defined to exclude rules. "Licensing" is specifically included to remove any question, since licenses involve a pronouncement of present rights of named parties although they may also prescribe terms and conditions for future observance. Licensing as such is later exempted from some of the provisions of sections 5, 7, and 8 relating to hearings and decisions. "Injunctive" action is a common determination of past or existing lawfulness, although the remedy or sanction is in form cast as a command or restriction for the future rather than as a fine, assessment of damages, or other present penalty.

SECTION 2 (E). "LICENSE" AND "LICENSING"

"License" is defined to include any form of required official permission such as certificate, charter, etc. "Licensing" is defined to include agency process respecting the grant, renewal, modification, denial, revocation, etc., of a license.

The definition of licensing supplements section 2 (d). It is included because licenses take many forms and the term is important in some of the remaining sections. Later provisions of the bill distinguish between initial licensing and renewals or other licensing proceedings.

SECTION 2 (F). "SANCTION" AND "RELIEF"

"Sanction" is defined to include any agency prohibition, withholding of relief, penalty, seizure, assessment, requirement, restriction, etc. "Relief" is defined to include any agency grant, recognition, or other beneficial action taken on the application or petition of any person.

These definitions are mainly relevant to section 9 on sanctions and powers and to section 10 on judicial review. They embrace all forms of legitimate administrative authority. They define but do not confer powers. They are necessary in order to identify "sanction" for the protection in later sections of those against whom agencies are authorized to proceed, and "relief" for the benefit of those seeking authorized redress.

SECTION 2 (G). "AGENCY PROCEEDING" AND "AGENCY ACTION"

"Agency proceeding" means any agency process defined in the foregoing subsections (c), (d), or (e). "Agency action" is defined to include an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, and failure to act.

"Agency proceeding" is a term devised to simplify the language of later sections and assure that all forms of administrative procedure or authority are included. The term "agency action" brings together previously defined terms in order to simplify the language of the judicial-review provisions of section 10 and to assure the complete coverage of every form of agency power, proceeding, action, or inaction. In that respect the term includes the supporting procedures, findings, conclusions, or statements of reasons or basis for the action or inaction.

SECTION 3. PUBLIC INFORMATION

From the public-information provisions of section 3 there are exempted matters (1) requiring secrecy in the public interest or (2) relating solely to the internal management of an agency.

The public-information requirements of section 3 are among the most useful provisions of the bill. The general public is entitled to know agency procedures and methods or to have the ready means of knowing with certainty. The section requires agencies to disclose their set-ups and procedures, to publish rules and interpretations intended as guides for the solution of cases, and to proceed in consistent accordance therewith until publicly changed.

The introductory clause of the section states the only general exceptions. The first, which excepts matters requiring secrecy in the public interest, is necessary but may not be construed to defeat the remaining provisions. It would include confidential operations in any agency, such as some of the aspects of the investigating or prosecuting functions of the Secret Service or Federal Bureau of Investigation, but no other functions or operations in those or other agencies. "Public interest" means manifest need in order to achieve the due execution of authorized functions. Closely related is the second exception, of matters relating solely to internal agency management, which may not be construed to defeat the other provisions or to permit withholding of information as to operations which remaining provisions of the section or of the whole bill require to be public or publicly available. Neither exception is operative unless the excepted subject matter is clearly and directly involved. Neither exception supersedes other legal requirements of publicity or free public accessibility.

SECTION 3 (A). RULES TO BE PUBLISHED

Every agency is required to publish in the Federal Register its (1) organization and delegations of final authority as well as places and ways of doing business with the public, (2) methods of rule making and adjudication, including the rules of practice relating thereto, and (3) such substantive rules, policies, or interpretations as it may frame for the guidance of the public but not rules addressed to and served upon named parties as provided by law. No person is in any manner to be required to resort to organization or procedure not so published.

Since the bill leaves wide latitude for each agency to frame its own procedures, this subsection requiring agencies to state their organization and procedures in the form of rules is essential for the information of the public. The publication must be kept up to date. The enumerated classes of informational rules must also be separately stated so that, for example, rules of procedure will be separate from rules of substance, interpretation, or policy. Under (1) only final delegations of authority to dispose of cases or matters must be published; the delegation of other functions would be shown in (2) in stating the general course and method by which each of an agency's functions are channeled and determined. Also, under (2), an agency is required to state all the stages, steps, courses, and alternatives for each of the types of functions it is authorized to perform. The section forbids secrecy of rules binding upon or applicable to the public, or of delegations of authority. Mimeographed releases of many kinds now common should no longer be necessary since, if they contain really informative matter, they must be published as rules, policies, or interpretations. Substantive rules include the statement of standards. As a matter of good practice rules of any kind should not unnecessarily repeat statutes, but may quote and should identify the statutory authority which they invoke or provisions they properly amplify. Where it is not desirable to publish complicated forms at length and in full-spread fashion in the Federal Register, under this provision an agency may publish in the Federal Register a simple statement of the contents of the form and, if blanks are available, state where they may be obtained. The requirement that no one shall "in any manner" be required to resort to unpublished organization or procedure protects the public from being required to pursue remedies that are not published as required by the section.

SECTION 3 (B). OPINIONS, ORDERS, AND RULES TO BE AVAILABLE TO
PUBLIC INSPECTION

Agencies are required to publish or, pursuant to rule, make available to public inspection all final opinions or orders in the adjudication of cases (except those held confidential for good cause and not cited as precedents) and all rules.

General rule making results in published material in the Federal Register as set forth in section 3 (a), but in the case of adjudication and some rules of particular applicability there is no standard medium of publication. Some agencies publish sets of some of their decisions, particularized rules, or orders; but otherwise the public is not informed as to how and where they may consult them. Requiring each agency to formulate and publish a rule respecting access to these materials of administrative law will afford the general public notice as to how such information may be consulted or secured. While the subsection does not mention "rulings"—which are neither rules nor orders but are general interpretations, such as the opinions of agency counsel—if authoritative they would be covered by the third category in section 3 (a). All rules must be subject at least to freely accorded public inspection under this section. The parenthetical exception respecting confidential opinions and orders would not supersede or repeal future or existing legal requirements of publication or public accessibility.

SECTION 3 (C). ACCESSIBILITY OF PUBLIC RECORDS

Except as statutes may require otherwise or information may be held confidential for good cause, matters of official record are to be made available to persons properly and directly concerned in accordance with rules to be issued by the agency.

The purpose of this section is to make access to public records generally applicable, uniform, and more readily determinable. The requirement of an agency rule on the availability of official records is inserted for the same purpose as in section 3 (b). The interest of the person seeking access to records may in some cases be determinative. Agencies must classify data, specify generally what may be disclosed and what may not, and provide where applications for information may be made, how they will be determined, and what public agents will do so. In short, a routine and a procedure must be provided as well as a classification. Refusals of information would be subject to the requirements of section 6 (d). The concluding exception would not repeal or supersede present or future legal requirements of publicity or public accessibility existing apart from the bill.

SECTION 4. RULE MAKING

The introductory clause exempts from all of the requirements of section 4 any rule making so far as there are involved (1) military, naval, or foreign-affairs functions or (2) matters relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

The principal purpose of this section is, where other statutes do not require a hearing, to provide that the legislative functions of administrative agencies shall so far as possible be exercised only upon public participation on notice as provided in sections 4 (a) and (b).

The introductory exceptions to the section do not relieve an agency from any requirements imposed by law apart from this bill. They apply only "to the extent" that the excepted subject matter is clearly and directly involved. The phrase "foreign affairs functions," used here and in some other provisions of the bill, is not to be loosely interpreted to mean any agency operation merely because it is exercised in whole or part beyond the borders of the United States but only those "affairs" which so affect the relations of the United States with other governments that, for example, public rule-making provisions would provoke definitely undesirable international consequences. The exception of matters of management or personnel would operate only so far as not inconsistent with other provisions of the bill relating to those matters. The term "public property" would include property held by the United States in trust or as guardian, as Indian property is often held. The exception of proprietary matters is included because a main consideration in such cases relates to mechanics, interpretations, or policy and it is wise to encourage and facilitate the issuance of rules by dispensing with all mandatory procedural requirements. Changes can then be sought through the petition procedures of section 4 (d), by which such rule making may also be initially invoked. But these exceptions are not to be taken as encouraging agencies not to adopt voluntary public rule-making procedures where useful to the agency or beneficial to the public. They merely confer a discretion upon agencies to decide what, if any, public rule-making procedures shall be utilized in a given situation within their terms.

SECTION 4 (A). NOTICE OF RULE MAKING

General notice of proposed rule making must be published in the Federal Register—unless all persons subject to the rules are named and are personally served or otherwise have actual notice as provided by law—and must include (1) the time, place, and nature of proceedings, (2) reference to the authority under which held, and (3) the terms, substance, or issues involved. However, except where notice and hearing is required by some other statute, the section does not apply to rules other than those of substance or where the agency for good cause finds (and incorporates the finding and reasons therefor in the published rule) that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.

The provisions respecting the fullness of notice apply whether or not, under the terms of the section, it must be published in the Federal Register. Notice must fairly apprise interested persons of the issues involved, so that they may present relevant data or argument. The required specification of legal authority must be done with particularity. Statements of issues in the general statutory language of legislative delegations of authority to the agency would not be a compliance with the section. Prior to public procedures agencies must conduct such nonpublic studies or investigations as will enable them to formulate issues, or where possible to issue proposed or tentative rules for the purpose of public proceedings. Summaries and reports may also be issued as aids in securing public comment or suggestions.

The section governs the application of the public procedures required by section 4 (b) since those procedures only apply where notice is required by this section. Agencies are given discretion to dispense with notice (and consequently with public proceedings) in the case of interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; but this does not mean that they should not undertake public procedures in connection with such rule making where useful to them or helpful to the public. The exemption of situations of emergency or necessity is not an "escape clause" in the sense that any agency has discretion to disregard its terms or the facts. A true and supported or supportable finding of necessity or emergency must be made and published. "Impracticable" means a situation in which the due, timely, and required execution of agency functions would be unavoidably prevented by its undertaking public rule-making proceedings. "Unnecessary" means so far as the public is concerned, as would be the case if a minor or merely technical amendment in which the public is not particularly interested were involved. "Public interest" supplements the terms "impracticable" or "unnecessary"; it requires that public rule-making procedures shall not unreasonably prevent an agency from fulfilling its duty and that, on the other hand, lack of public concern in rule making warrants an agency to dispense with public procedure. Where authority beneficial to the public does not become operative until a rule is issued, the agency may promulgate the necessary rule immediately and rely upon supplemental procedures in the nature of a public reconsideration of the issued rule to satisfy the requirements of this section. Where public rule-making procedures

are dispensed with, the provisions of subsections (c) and (d) of this section would nevertheless apply. Notice otherwise required by law apart from this bill is not repealed or diminished by this section.

SECTION 4 (B). PUBLIC PROCEDURES IN RULE MAKING

After such notice, the agency must afford interested persons an opportunity to participate in the rule making at least to the extent of submitting written data, views, or argument; and, after consideration of such presentations, the agency must incorporate in any rules adopted a concise general statement of their basis and purpose. However, where other statutes require rules to be made after opportunity for hearing, the requirements of sections 7 and 8 (relating to public hearings and decisions thereon) apply in place of the provisions of this subsection.

The first sentence states the minimum requirements of public rule-making procedure short of statutory hearing. Under it agencies might in addition confer with industry advisory committees, consult organizations, hold informal "hearings," and the like. Open proceedings may be aided by the submission of reports or summaries of data by agency representatives. Where open proceedings are held, interested persons unable to be present would be entitled to make written submittals. Considerations of practicality, necessity, and public interest as discussed in connection with section 4 (a) will naturally govern the agency's determination of the extent to which public proceedings may be carried. Matters of great import, or those where the public submission of facts will be either useful to the agency or a protection to the public, should naturally be accorded more elaborate public procedures. The agency must keep a record and analyze and consider all relevant matter presented prior to the issuance of rules. The required statement of the basis and purpose of rules issued should not only relate to the data so presented but with reasonable fullness explain the actual basis and objectives of the rule.

These rule-making procedures must be incorporated in the rules published pursuant to section 3 (a), although their applicability may be left to the notice of rule making in a given case and modifications or extensions of procedure may be made in the notice.

SECTION 4 (C). FUTURE EFFECTIVE DATE OF RULES

The required publication or service of any substantive rule must be made not less than 30 days prior to its effective date except (1) as otherwise provided by the agency for good cause found and published or (2) in the case of rules recognizing exemption or relieving restriction, interpretative rules, and statements of policy.

This section does not repeal or diminish other time requirements provided by law apart from this bill. It does not provide procedures alternative to notice and other public proceedings required by the prior sections. Nor does it supersede the provisions of section 4 (d). Where public procedures are omitted as authorized in certain cases, section 4 (c) does not thereby become inoperative. It will afford persons affected a reasonable time to prepare for the effective date of a rule or rules or to take any other action which the issuance of rules may prompt. The specification of a 30-day deferred effective date

is not to be taken as a maximum, since there may be cases in which good administration or the convenience and necessity of the persons subject to the rule reasonably require a longer period. While certain named kinds of rules are not necessarily subject to the deferred effective date provided, it does not thereby follow that agencies are required to make such excepted types of rules operative with less notice or no notice but, instead, agencies may fix such future effective date as is advisable. The other exception—upon good cause found and published—is not an “escape clause” which may be exercised at will but requires legitimate grounds supported in law and fact by the required finding. Many rules, such as some agricultural marketing “orders,” may be made operative in less than 30 days because of inescapable or unavoidable limitations of time, because of the demonstrable urgency of the conditions they are designed to correct, and because the parties subject to them may during the usually protracted hearing and decision procedures anticipate the regulation. In any event, however, no rule requiring action may be made effective until a legally reasonable time after its issuance as judged in the light of all the circumstances.

SECTION 4 (D). PETITIONS RESPECTING RULES

Every agency is required to accord any interested person the right to petition for the issuance, amendment, or repeal of a rule.

This section applies not merely to effective rules existing at any time but to proposed or tentative rules. Where such petitions are made, the agency must fully and promptly consider them, take such action as may be required, and pursuant to section 6 (d) notify the petitioner in case the request is denied. The agency may either grant the petition, undertake public rule-making proceedings as provided by sections 4 (a) and 4 (b), or deny the petition. The mere filing of a petition does not require an agency to grant it, or to hold a hearing, or to engage in other public rule-making proceedings. But the agency must act on the petition in accordance with procedures set up and published in compliance with section 3 (a).

SECTION 5. ADJUDICATIONS

The provisions of section 5 relating to adjudications apply only where the case is required by some other statute to be determined upon an agency hearing except that, even in that case, the following classes of operations are expressly not affected: (1) Cases subject to trial de novo in court, (2) selection or tenure of public officers other than examiners, (3) decisions resting on inspections, tests, or elections, (4) military, naval, and foreign-affairs functions, (5) cases in which an agency is acting for a court, and (6) the certification of employee representatives.

This section is limited to cases in which other statutes require an agency to act upon or after a hearing, but even then the numbered exceptions remove from the operation of the section adjudications otherwise required by statute to be made after hearing or opportunity therefor. The first, where the adjudication is subject to a judicial trial de novo, is included because whatever judgment the agency makes is effective only in a prima facie sense at most and the party aggrieved is entitled to complete judicial retrial and decision. The second, respect-

ing the selection and tenure of officers other than examiners, is included because the selection and control of public personnel has been traditionally regarded as a largely discretionary function. The third exempts proceedings resting entirely on inspections, tests, or elections because those methods of determination do not lend themselves to the hearing process. The fourth exempts military, naval, and foreign affairs functions for the same reasons that they are exempted from section 4; in any event, rarely do statutes require such functions to be exercised upon hearing; and the term "foreign affairs" is used in the same sense as in section 4. The fifth, exempting cases in which an agency is acting as the agent for a court, is included because the administrative operation is subject to judicial revision in toto. The sixth, exempting the certification of employee representatives such as the Labor Board operations under section 9 (c) of the National Labor Relations Act, is included because those determinations rest so largely upon an election or the availability of an election. Any of these exceptions apply only "to the extent" that the excepted subject is clearly and directly involved.

SECTION 5 (A). NOTICES OF MAKING ADJUDICATIONS

Persons entitled to notice of an agency hearing are to be duly and timely informed of the (1) time, place, and nature of the hearing, (2) the legal authority and jurisdiction under which it is to be held, and (3) the matters of fact and law asserted. Where private persons are the moving parties, respondents must give prompt notice of issues controverted in law or fact; and in other cases the agency may require responsive pleading. In fixing the times and places for hearings the agency must give due regard to the convenience and necessity of the parties.

A party must be given ample notice of the legal and factual issues with due time to examine, consider, and prepare for them. To make that possible the issues must be specified with reasonable particularity, for which purpose the statement of issues in general statutory language of delegations of authority to the agency would not be sufficient. The second sentence of the subsection applies in those cases where the agency does not control the matter of notice because private persons are the moving parties; and in such cases the respondent parties must give notice of the issues of law or fact which they controvert so that the moving party will be apprised of the issues he must sustain. The purpose of the provision is to simplify the issues for the benefit of both the parties and the deciding authority.

SECTION 5 (B). ADJUDICATION PROCEDURE

The agency is required first to afford parties an opportunity for the settlement or adjustment of issues (where time, the nature of the proceeding, and the public interest permit) followed, to the extent that issues are not so settled, by hearing and decision under sections 7 and 8.

The preliminary settlement-by-consent provision of this section is important. Such adjustments may comprehend the whole or any part of any case. Pursuant to section 3 (a) agencies would be required to state settlement procedures in their rules. The limitation to cases in which "time, the nature of the proceeding, and the public

DIAGRAM SYNOPSIS OF BILL OMITT

GENERAL PROVISIONS

SEC. 1. Title.—"Administrative Procedure Act."

SEC. 2. Definitions.—Defines (a) agency, excepting representative and war agencies, (b) person and party, (c) rule and rule making, (d) order and adjudication, (e) license and licensing, (f) sanction and relief, (g) agency proceeding and action.

SEC. 3. Public Information.—Except secret functions and internal management: (a) agencies are required to publish organization, procedure, and other general rules, (b) opinions and orders are to be published or open to inspection, and (c) official records are to be made available to properly interested persons.

SEC. 6. Ancillary Matters.—(a) Parties are entitled to counsel. (b) Investigations are to be confined to authority granted agencies and witnesses are entitled to copies of testimony. (c) Subpenas are to be issued to parties on request and reasonable showing, and are to be judicially enforced if in accordance with law. (d) Written notice and statement of grounds is to be given by agency in denying any request.

SEC. 9. Sanctions and Powers.—In exercise of any power or authority: (a) no sanction is to be imposed or rule or order issued save within jurisdiction delegated and authority granted by law, (b) license applications are to be acted upon promptly, revocation is not to be attempted except upon notice and opportunity for the licensee to comply with lawful requirements, and renewals are not to be deemed denied until finally acted upon.

SEC. 11. Examiners.—Examiners are to be appointed pursuant to Civil Service for proceedings under sections 7 and 8 and may perform no inconsistent duties. They are removable only for good cause determined by Civil Service Commission after hearing, which is subject to judicial review. They are to receive compensation prescribed and adjusted by Civil Service Commission independently of agency recommendations or ratings.

SEC. 12. Construction and Effect.—The Act is not to impair other or additional legal rights. Procedure is to apply equally. The usual saving clause is included. Authority is granted to agencies to comply with the Act. Subsequent repeals are to be express. Effective dates are to be deferred and the Act is not to apply to proceedings previously begun.

NOTE: Sections 7, 8, and 11 apply only where other statutes require an agency hearing; and section 10 applies in a proper case whether or not an agency hearing is required. Sections 4, 5, 6 (b) and (c), and 9 (b) apply only where agencies by other statutes are given authority to make regulations, adjudicate cases, investigate, issue subpenas, or grant licenses as the case may be. The definitions in section 2 are not operative apart from the rest of the bill.

TAIL AND SECONDARY EXCEPTIONS

QUASI-LEGISLATIVE FUNCTIONS

SEC. 4. Rule Making.—Except war, foreign affairs, management, and proprietary functions: (a) notice of rule making is to be published in certain instances, (b) thereafter interested persons are to be permitted to make at least written submittals for agency consideration, except that if other statutes require an agency hearing then sections 7 and 8 apply, (c) effective date of rules is to be 30 days following publication, and (d) any interested person may petition for issuance, amendment, or repeal of a rule.

QUASI-JUDICIAL FUNCTIONS

SEC. 5. Adjudication.—Where statutes require a hearing: (a) contents of notice are specified, (b) hearings are to be held under sections 7 and 8 to the extent issues cannot first be settled informally, (c) hearing officers are required to operate entirely separate from prosecuting officers and to make or recommend the decision in the case, and (d) agencies are authorized to issue declaratory orders.



SEC. 7. Hearings.—In hearings which sections 4 or 5 require to be conducted under this section: (a) presiding officers are to be the agency or its members, examiners, or others specially provided for in other statutes, all to act impartially and be subject to disqualification, (b) presiding officers are to have authority necessary to conduct the hearing and dispose of motions, (c) irrelevant and repetitious evidence is to be excluded as a matter of policy and no sanction is to be imposed or rule or order issued except upon the whole record and as supported by and in accordance with reliable, probative, and substantial evidence, and (d) record of the hearing is to be exclusive for purposes of decision.



SEC. 8. Decisions.—Where hearing is required under section 7: (a) examiners are to make either initial decision or recommended decision, as the agency may determine, and (b) prior to any recommended or other decision the parties are entitled to submit suggested findings, exceptions, and supporting reasons and all decisions are to include findings on material issues and a statement of the appropriate action.



SEC. 10. Judicial Review.—Except so far as statutes preclude judicial review or agency action is by law committed to agency discretion: (a) any person suffering legal wrong is entitled to judicial review, (b) the form of action is to be that specially provided by any statute or, in the absence or inadequacy thereof, any appropriate common-law action, (c) every action for which there is no other adequate remedy is made subject to such review, (d) agencies or courts may stay agency action or preserve status or rights pending review, and (e) reviewing courts, upon the whole record and with due regard for the rule of prejudicial error, are to determine all questions of law, compel agency action unlawfully withheld, and hold unlawful action found (1) arbitrary, (2) not in accord with the Constitution, (3) in violation of any statute, (4) without observance of procedure required by law, (5) unsupported by substantial evidence on the record in cases subject to sections 7 and 8, or (6) unwarranted by the facts to extent that facts are subject to trial *de novo* by the reviewing court.

interest permit" does not mean that formal proceedings, to the exclusion of prior opportunity for informal settlement, may be required at will by an agency. It is intended to exempt only situations in which (1) time is unavoidably lacking, (2) the nature of the proceeding is such that the number of parties makes it unlikely that any adjustment could be reached, and (3) the administrative function requires immediate execution in order to protect the demonstrable requirements of public interest in the due and timely execution of the laws. Where settlements do not dispose of the whole case, sections 7 and 8 as well as section 5 (c) apply.

SECTION 5(C). SEPARATION OF PROSECUTING FUNCTIONS

Officers who preside at the taking of evidence must make the decision or recommended decision in the case. They may not consult with any person or party except openly and upon notice save in the disposition of customary ex parte matters, and they may not be made subject to the supervision of prosecuting officers. The latter may not participate in the decisions except as witness or counsel in public proceedings. However, the subsection is not to apply in determining applications for initial licenses or the validity or application of rates, facilities, or practices of public utilities or carriers; nor does it apply to the top agency or members thereof.

The purpose of the section is to assure that no investigating or prosecuting officer shall directly or indirectly in any manner influence or control the operations of hearing and deciding officers, except as a participant in public proceedings, and even then in no different fashion than the private parties or their representatives. The separation of functions here required must be reflected in the rules of organization and procedure issued pursuant to section 3 (a). "Ex parte matters authorized by law" means passing on requests for adjournments, continuances, filing of papers, and so forth. The exemption of applications for initial licenses frees from the requirements of the section such matters as the granting of certificates of convenience and necessity, upon the theory that in most licensing cases the original application may be much like rule making. The latter, of course, is not subject to any provision of section 5. The exemption of cases involving the validity or application of utility or carriers' rates, facilities, or practices is included for a similar reason—since they may often be consolidated with rule making. There are, however, some instances of either kind of case which tend to be accusatory in form and involve sharply controverted factual issues, to which agencies should not apply the exceptions because they are not to be interpreted as precluding fair procedure where it is required.

The last exemption—of the agency itself or the members of the board who comprise it—is required by the very nature of administrative agencies, where the same authority is responsible for both the investigation-prosecution and the hearing and decision of cases. There, too, the exemption is not to be taken as meaning that the top authority must reserve to itself both prosecuting and deciding functions. It is ultimately responsible for all functions committed to it, but it may and should confine itself to determining policy and delegate the actual supervision of investigations and initiation of cases to responsible

subordinate officers. Agencies, such as heads of bureaus or departments, performing mainly executive functions should delegate to examiners or boards of examiners at least the initial decision of cases and should confine their own review to important issues of law or policy.

SECTION 5 (D). DECLARATORY ADJUDICATIONS

Every agency is authorized in its sound discretion to issue declaratory orders with the same effect as other orders.

This section does not mean that any agency empowered to issue orders may issue declaratory orders, because it is limited by the introductory clauses of section 5 so that such orders may be issued only where the agency is empowered by statute to hold hearings and the subject is not otherwise expressly exempted there. Where authorized to do so by this section, agencies are not required to issue declaratory orders merely because request is made therefor. Such applications have no greater effect than they now have under existing comparable legislation. "Sound discretion," moreover, would preclude the issuance of improvident orders. The administrative issuance of declaratory orders would be governed by the same basic principles that govern declaratory judgments in the courts. Such orders, if issued, would not bind those not parties to them or determine subject matter not presented. They would be subject to judicial review as in the case of other orders.

SECTION 6. ANCILLARY MATTERS

The provisions of section 6 relating to incidental or miscellaneous rights, powers, and procedures do not override contrary provisions in other parts of the bill.

The purpose of this introductory exception, which reads "except as otherwise provided in this act," is to limit, for example, the right of appearance provided in section 6 (a) so as not to authorize improper ex parte conferences during formal hearings and pending formal decisions under sections 7 and 8. This section 6 contains provisions respecting various procedural rights which may be incidental to either rule making or adjudication or independent of either.

SECTION 6 (A). APPEARANCE OR REPRESENTATION OF PARTIES

Any person compelled to appear in person before any agency or its representative is entitled to counsel. In other cases, every party may appear in person or by counsel. So far as the orderly conduct of public business permits, any interested person may appear before any agency or its responsible officers at any time for the presentation or adjustment of any matter. Agencies are to proceed with reasonable dispatch to conclude any matter so presented, with due regard for the convenience and necessity of the parties. Nothing in the subsection is to be taken as recognizing or denying the propriety of nonlawyers representing parties.

The section is a statement of statutory and mandatory right of interested persons to appear themselves or through or with counsel before any agency in connection with any function, matter, or process whether formal, informal, public, or private. The word "party" in the second sentence is to be understood as meaning any person show-

ing the requisite interest in the matter, since the section applies in connection with the exercise of any agency authority whether or not formal proceedings are available. The phrase "responsible officers," as used here and in some other provisions, includes all officers or employees who actually determine matters or exercise substantial advisory functions. The qualifying words in the third sentence—which read "so far as the orderly conduct of public business permits"—preclude numerous petty appearances by or for the same party in the same case; but they do not confer upon agencies a right to preclude interested persons from presenting fully and before any responsible officer or employee their cases or proposals in full. The reference to interlocutory and summary proceedings emphasizes the necessity for an opportunity for full informal appearance where normal and formal hearing and decision requirements are not applicable prior to agency action.

The requirement that agencies proceed "with reasonable dispatch to conclude any matter presented" means that no agency shall in effect deny relief or fail to conclude a case by mere inaction, or proceed in dilatory fashion to the injury of the persons concerned. No agency should permit any person to suffer injurious consequences of unwarranted official delay.

The final sentence provides that the subsection shall not be taken to recognize or deny the rights of nonlawyers to be admitted to practice before any agency. The use of the word "counsel" means lawyers. The right of agencies to pass upon the qualifications of nonlawyers is expressly recognized and preserved in the subsection, but this provision does not authorize an agency to permit nonlawyers to "practice law" where that would be contrary to law apart from this bill. As to lawyers, agencies are ordinarily not warranted in laying burdensome requirements upon those in good standing in the courts and should normally require no more at most than an attorney's own representation that he is such in good standing before the highest court of any State, Territory, or the United States.

SECTION 6(B). ADMINISTRATIVE INVESTIGATIONS

Investigative process is not to be issued or enforced except as authorized by law. Persons compelled to submit data or evidence are entitled to retain or, on payment of costs, to procure copies except that in nonpublic proceedings a witness may for good cause be limited to inspection of the official transcript.

This section is designed to preclude "fishing expeditions" and investigations beyond jurisdiction or authority. It applies to any demand, whether or not a formal subpoena is actually issued. It includes demands or requests to inspect or for the submission of reports. An investigation must be substantially and demonstrably necessary to agency operations, conducted through authorized and official representatives, and confined to the legal and factual sphere of the agency as provided by law. Investigations may not disturb or disrupt personal privacy, or unreasonably interfere with private occupation or enterprise. They should be conducted so as to interfere in the least degree compatible with adequate law enforcement.

“Nonpublic investigatory proceeding” means those of the grand jury kind in which evidence is taken behind closed doors. The limitation, for good cause, to inspection of the official transcript may be properly invoked by an agency where evidence is taken in a case in which prosecutions may be brought later and it would nullify the execution of the laws to permit copies to be circulated. In those cases the “good cause” should be clear and convincing; then the witness or his counsel may be limited to inspection of the relevant portions of the transcript. Parties should in any case have copies or an opportunity for inspection in order to assure that their evidence is correctly set forth, to refresh their memories in the case of stale proceedings, and to enable them to be advised by counsel. They should also have such copies whenever needed in other judicial or administrative proceedings.

SECTION 6 (C). ADMINISTRATIVE SUBPENAS

Where agencies are by law authorized to issue subpoenas, parties may secure them upon request and upon a statement or showing of general relevance and reasonable scope if the agency rules so require. Where a party contests a subpoena, the court is to inquire into the situation and, so far as the subpoena is found in accordance with law, issue an order requiring the production of the evidence within a reasonable time under penalty of contempt for failure then to comply.

This provision will assure private parties the same access to subpoenas, pursuant to the same just and reasonable routine, as that available to the representatives of agencies. It will also prevent the issuance of improvident subpoenas or action by an agency requiring a detailed, unnecessary, and burdensome showing of what evidence is sought. The section constitutes a statutory limitation upon the issuance or enforcement of subpoenas in excess of agency authority or jurisdiction, in connection with any agency function or authority. It does not mean that upon contest courts should enter into a detailed examination of facts and issues which are committed to agency authority in the first instance; they should instead inquire generally into the legal and factual situation and be satisfied that the agency could lawfully have jurisdiction. The section expressly recognizes the right of parties subject to administrative subpoenas to contest their validity in the courts prior to subjection to any form of penalty for noncompliance. In such contests, the court is required to determine all relevant questions of law.

SECTION 6 (D). AGENCY DENIALS OF REQUESTS

Prompt notice is to be given of denials of requests in any agency proceeding, accompanied by a simple statement of procedural or other grounds.

The section affords the parties in any agency proceeding, whether or not formal or upon hearing, the right to prompt action upon their requests, immediate notice of such action, and a statement of the actual grounds therefor. The latter should in any case be sufficient to apprise the party of the basis of the denial and any other or further administrative remedies or recourse he may have. A statement of

the actual grounds need not be made "in affirming a prior denial or where the denial is self-explanatory." However, prior denial would satisfy this requirement only where the grounds previously stated remain the actual grounds and sufficiently notify the party. A self-explanatory denial must meet the same test; that is, the request must be in such form that its mere denial fully informs the party of all he would otherwise be entitled to have stated.

SECTION 7. HEARINGS

Section 7 relating to agency hearings applies only where hearings are otherwise required by statute and by section 4 or 5.

As heretofore stated in connection with sections 4 and 5, the bill requires no hearings unless other statutes contain such a requirement in particular cases of either rule making or adjudication and even then section 5 contains numerous functional exceptions. This section 7, therefore, is merely supplementary to section 4 or 5 in the relevant cases. These formal hearing provisions are not in derogation of the settlement provisions of sections 5 and 6 (a), which require that parties be given every opportunity to simplify or settle cases. Hearings are not to be used as indirect burdens or penalties.

SECTION 7 (A). PRESIDING OFFICERS AT HEARINGS

The hearing must be held either by the agency, a member or members of the board which comprises it, one or more examiners, or other officers specially provided for in or designated pursuant to other statutes. All presiding and deciding officers are to operate impartially. They may at any time withdraw if they deem themselves disqualified and, upon the filing of a proper affidavit of personal bias or disqualification against them, the agency is required to determine the matter as a part of the record and decision in the case.

The section provides two mutually exclusive methods of hearing—by the agency itself (or one or more of its members) or by subordinate officers. Also recognized as hearing officers are those, including State representatives, specially provided for or named in other statutes. But the reference to other statutory officers would not prevent an agency, such as the head of a department or a board, from utilizing examiners as provided by the bill. On the other hand, statutory provisions authorizing the use of employees or attorneys generally to be presiding officers are superseded. The preservation of the "conduct of specified classes of proceedings by or before boards or other officers specially provided by or designated pursuant to statute" is not a loophole for the avoidance of the examiner system; it is intended to preserve only special types of statutory hearing officers who contribute some special qualifications, as distinguished from examiners otherwise provided in the bill, and at the same time assure the parties fair and impartial procedure.

Those who so preside are subject to the remaining provisions of the bill. They must conduct the hearing in a strictly impartial and considerate manner, rather than as representatives of an investigative or prosecuting authority. They may make sure that all necessary evidence is adduced and keep the hearing orderly and efficient. No

examiner may proceed in willful disregard of law. Presiding officers must conduct themselves in accord with the requirements of this bill and with due regard for the rights of all parties as well as the facts, the law, and the need for prompt and orderly dispatch of public business.

The provision for affidavits of bias or personal disqualification requires a decision thereon by the agency in, and as a part of, the case; it thereby becomes subject to administrative and judicial review. That decision might be made upon the affidavit alone, as for example, the protest might be dismissed as insufficient on its face. The agency itself may hear any relevant argument or facts, or it may designate an examiner to do so. The effect which bias or disqualification shown upon the record might have would be determined by the ordinary rules of law and the other provisions of this bill. If it appeared or were discovered late, it would have the effect—where issues of fact or discretion were important and the conduct and demeanor of witnesses relevant in determining them—of rendering the recommended decisions or initial decisions of such officers invalid. This consequence will require agencies and examiners themselves to take care that they do not sit where subject to disqualification.

The term “presiding officers” means those who officially sit and conduct the proceedings for reception of evidence. If more than one so “presides,” there may of course be a chairman who also presides in a slightly different but familiar sense as chairman of the presiding body.

SECTION 7 (B). HEARING POWERS OF PRESIDING OFFICERS

Presiding officers, subject to the rules of procedure adopted by the agency and within its powers, have authority to (1) administer oaths, (2) issue such subpoenas as are authorized by law, (3) receive evidence and rule upon offers of proof, (4) take depositions or cause them to be taken, (5) regulate the hearing, (6) hold conferences for the settlement or simplification of issues, (7) dispose of procedural requests, (8) make decisions or recommended decisions under section 8 of the bill, and (9) exercise other authority as provided by agency rule consistent with the remainder of the bill.

The section does not expand the powers of agencies. It assures that the presiding officer or officers will perform a real function rather than serve merely as notaries or policemen. They would have and independently exercise all the powers listed in the section. The agency itself—which must ultimately either decide the case, consider reviewing it, or hear appeals from the examiner’s decision—should not in effect conduct hearings from behind the scenes where it cannot know the detailed happenings in the hearing room and does not hear or see the witnesses or private parties.

SECTION 7 (C). EVIDENCE REQUIREMENTS

Except as statutes otherwise provide, the proponent of a rule or order has the burden of proof. While any evidence may be received, as a matter of policy agencies are required to provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction may be imposed or rule or order be issued except upon consideration of the whole record or such portions as any party may cite and as supported by and

in accordance with reliable, probative, and substantial evidence. Any party may present his case or defense by oral or documentary evidence, submit rebuttal evidence, and conduct reasonable cross-examination. However, in the case of rule making or determining applications for initial licenses, the agency may adopt procedures for the submission of evidence in written form so far as the interest of any party will not be prejudiced thereby.

That the proponent of a rule or order has the burden of proof means not only that the party initiating the proceeding has the general burden of coming forward with a *prima facie* case but that other parties, who are proponents of some different result, also for that purpose have a burden to maintain. Similarly the requirement that no sanction be imposed or rule or order be issued except upon evidence of the kind specified means that the proponents of a denial of relief must sustain such denial by that kind of evidence. For example, credible and credited evidence submitted by the applicant for a license may not be ignored except upon the requisite kind and quality of contrary evidence. No agency is authorized to stand mute and arbitrarily disbelieve credible evidence. Except as applicants for a license or other privilege may be required to come forward with a *prima facie* showing, no agency is entitled to presume that the conduct of any person or status of any enterprise is unlawful or improper. In other words, this section means that every proponent of a rule or order or the denial thereof has the burden of coming forward with sufficient evidence therefor; and in determining applications for licenses or other relief any fact, conduct, or status so shown by credible and credited evidence must be accepted as true except as the contrary has been shown or such evidence has been rebutted or impeached by duly credited evidence or by facts officially noticed and stated.

The second and primary sentence of the section is framed on the premise that, as to the admissibility of evidence, an administrative hearing is to be compared with an equity proceeding in the courts. Thus, the mere admission of evidence is not to be taken as prejudicial error (there being no lay jury to be protected from improper influence) although irrelevant, immaterial, and unduly repetitious evidence is useless and is to be excluded as a matter of efficiency and good practice; and no finding or conclusion may be entered except upon consideration by the agency of the whole record or so much thereof as a party may cite and as supported by and in accordance with evidence which is plainly of the requisite relevance and materiality—that is, “reliable, probative, and substantial evidence.” Thus while the exclusionary “rules of evidence” do not apply except as the agency may as a matter of sound practice simplify the hearing and record by excluding improper or unnecessary matter, the accepted standards and principles of probity, reliability, and substantiality of evidence must be applied. These are standards or principles usually applied tacitly and resting mainly upon common sense which people engaged in the conduct of responsible affairs instinctively understand. But they exist and must be rationally applied. They are to govern in administrative proceedings. These requirements do not preclude the admission of or reliance upon technical reports, surveys, analyses, and summaries where appropriate to the subject matter.

The first and second sentences of the section therefore mean that, where a party having the burden of proceeding has come forward with a prima facie and substantial case, he will prevail unless his evidence is discredited or rebutted. In any case the agency must decide "in accordance with the evidence." Where there is evidence pro and con, the agency must weigh it and decide in accordance with the preponderance. In short, these provisions require a conscientious and rational judgment on the whole record in accordance with the proofs adduced. The proof must be substantial, as provided in this section and also in section 10 (e) where the term "substantial evidence" is discussed later in this report.

The provision on its face does not confer a right of so-called "unlimited" cross-examination. Presiding officers will have to make the necessary initial determination whether the cross-examination is pressed to unreasonable lengths by a party or whether it is required for the "full and true disclosure of the facts" stated in the provision. Nor is it the intention to eliminate the authority of agencies to confer sound discretion upon presiding officers in the matter of its extent. The test is—as the section states—whether it is required "for a full and true disclosure of the facts." In many rule-making proceedings where the subject matter and evidence are broadly economic or statistical in character and the parties or witnesses numerous, the direct or rebuttal evidence may be of such a nature that cross-examination adds nothing substantial to the record and unnecessarily prolongs the hearings. The right of cross-examination extends, in a proper case, to written evidence submitted pursuant to the last sentence of the section as well as to cases in which oral or documentary evidence is received in open hearing. Even in the latter case, subject to the appropriate safeguards, technical data may as a matter of convenience be reduced to writing and introduced as in courts. Among these are technical statements, reports of surveys, analyses, and summaries. The written evidence provision of the last sentence of the section is designed to cover situations in which, as a matter of general rule or practice, the submission of the whole or substantial portions of the evidence in a case is done in written form. In those situations, however, the provision limits the practice to specified classes of cases and, even then, only where and to the extent that "the interest of any party will not be prejudiced thereby." To the extent that cross-examination is necessary to bring out the truth, the party must have it. An adequate opportunity must also be provided for a party to prepare and submit appropriate rebuttal evidence.

Agencies must comply fully and the courts, pursuant to section 10 of the bill, must enforce all of these requirements diligently.

SECTION 7 (D). RECORD OF HEARINGS

The record of evidence taken and papers filed is exclusive for decision and, upon payment of costs, is available to the parties. Where decision rests on official notice of a material fact not appearing in the evidence of record, any party may on timely request show the contrary.

The "official notice" mentioned relates to the administrative practice of taking facts as shown and true though not in the record. This is done by analogy to "judicial notice" familiar in court procedure. Where agencies take such notice they must so state on the

record or in their decisions and then afford the parties an opportunity to show the contrary. But such notice may initially be taken only of generally recognized and ordinarily indisputable facts—usually those of a scientific or public nature.

SECTION 8. AGENCY DECISIONS AFTER HEARING

Section 8 applies to cases in which a hearing is required to be conducted pursuant to section 7.

Like section 7, upon which section 8 depends, this section is supplementary to sections 4 and 5 in cases in which agency action is required to be taken after hearing provided by statute and not otherwise expressly excepted. The decision in formal proceedings is exceedingly important, because most criticisms of the administrative process relate in one way or another to the methods whereby agencies decide cases. There are suspicions and good ground for assuming that those who purport to decide cases actually do not, that the submittals of private parties are not fully considered, that the views of agency personnel are emphasized without opportunity for private parties to meet them, and that matters outside the record are often the real grounds of decision.

SECTION 8 (A). DECISIONS BY SUBORDINATES

Where the agency has not presided at the reception of the evidence, the presiding officer (or any other officer qualified to preside, in cases exempted from section 5 (c)) must make the initial decision unless the agency—by general rule or in a particular case—undertakes to make the initial decision. If the presiding officer makes the initial decision, it becomes the decision of the agency in the absence of an appeal to the agency or review by the agency on its own motion. On such appeal or review, the agency has all the powers it would have had in making the initial decision. If the agency makes the initial decision without having presided at the taking of the evidence, whatever officer took the evidence must first make a recommended decision except that, in rule making or determining applications for initial licenses, (1) the agency may instead issue a tentative decision or any of its responsible officers may recommend a decision or (2) such intermediate procedure may be wholly omitted in any case in which the agency finds on the record that the execution of its functions imperatively and unavoidably so requires.

These provisions are mandatory but permit agencies to either have their examiners make decisions or, as is now usually the case, recommend decisions. In either case the examiner system is necessary because agencies cannot themselves hear all cases. Where they do not do so some device must be used to bridge the gap between the officials who hear and those who decide cases. The provision that on agency review of initial examiners' decisions it has all the powers it would have had in making the initial decision itself does not mean that initial examiners' decisions or recommended decisions are without effect: They become a part of the record and are of consequence, for example, to the extent that material facts in any case depend on the determination of credibility of witnesses as shown by their demeanor or conduct at the hearing. In a broad sense the agencies' reviewing powers are to be compared with that of courts under section 10 (e)

of the bill. The agency may adopt in whole or part the findings, conclusions, and basis stated by examiners or other presiding officers. Agency rules must prescribe a reasonable time for appeals from initial examiners' decisions. Where the agency determines to review such a case, it should, so far as possible, specify the issues of law, fact, or discretion for review with particularity.

The alternative intermediate procedure which an agency may adopt in rule-making or determining applications for initial licenses is broadly drawn. But even in those cases, if issues of fact are sharply controverted or the case or class of cases tends to become accusatory in nature, sound practice would require the agency to adopt the intermediate recommended decision procedure.

SECTION 8 (B). REQUIREMENTS FOR ALL SUBMITTALS AND DECISIONS

Prior to each recommended or other decision or review the parties must be given an opportunity to submit for the full consideration of deciding officers (1) proposed findings and conclusions or (2) exceptions to recommended decisions or other decisions being appealed or reviewed, and (3) supporting reasons for such findings, conclusions, or exceptions. The record must show the official rulings upon each such finding, conclusion, or exception presented. All recommended or other decisions become a part of the record and must include (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented by the record and (2) the appropriate agency action or denial.

"Supporting reasons" means that briefs on the law and facts must be received and fully considered by every recommending, deciding, or reviewing officer. They must also hear such oral argument as may be required by law, and the bill does not diminish rights to oral argument. Where the issues are serious or the case becomes one adversary in character, the agency should provide for oral argument before all recommending, deciding, or reviewing officers.

The requirement that the agency must state the reasons or basis for its findings and conclusions means that such findings and conclusions must be sufficiently related to the record and the law as to advise the parties and any reviewing court of their record and legal basis. Most agencies will do so by opinions which reason and relate the issues of fact, law, and discretion. Statements of reasons, however, may be long or short as the nature of the case and the novelty or complexity of the issues may require.

Findings and conclusions must include all the relevant issues of law and fact presented by the record. They may be few or many, simple or complex, as the case may be. Where oral testimony is conflicting or subject to doubt of its credibility, the credibility of witnesses would be a necessary finding if the facts are material. It should also be noted that the relevant issues extend to matters of administrative discretion as well as of law and fact. This is important because agencies often appear to determine only whether they have power to act rather than whether their discretion should be exercised or how it should be exercised. Furthermore, without a disclosure of the basis for the exercise of, or failure to exercise, discretion, the parties are unable to determine what other or additional facts they might offer by way of rehearing or reconsideration of decisions.

When made, decisions as defined by this section must be served on parties named, and also furnished to those participating as well as to interested persons who request them or have attempted to participate or intervene. Any person who requests in writing to be notified or given copies should have his request honored.

SECTION 9. AGENCY SANCTIONS AND POWERS

Section 9 relating to powers and sanctions refers to the exercise of any power or authority by an agency.

Unlike sections 7 and 8, this section applies in all relevant cases, whether or not the agency is required by statute to proceed upon hearing or in any special manner. It also applies to any power or authority that an agency may assume to exercise.

SECTION 9 (A). GENERAL LIMITATION ON SANCTIONS AND POWERS

No sanction may be imposed or substantive rule or order be issued except within the jurisdiction delegated to the agency and as authorized by law.

This section embraces both substantive and procedural requirements of law. It means that agencies may not undertake anything which statutes or other adequate sources of authority (such as treaties) do not authorize them to do. Where these sources are specific in the authority granted, no additional authority may be assumed. Where these sources are general, no authority beyond the generality granted may be exercised. In short, agencies may not impose sanctions which have not been specifically or generally provided for them to impose. Thus, an agency which is authorized only to issue cease-and-desist orders may not set up a licensing system. An agency authorized to regulate only trade practices may not regulate banking, and so on. Similarly, no agency may undertake directly or indirectly to exercise the functions of some other agency. The section confines each agency to the jurisdiction delegated to it by law. Sanctions in the way of penalties or relief must be identified and authorized by law, and where authorized they must in any case properly apply in the factual situation presented.

One troublesome subject in this field is that of publicity, which may in no case be utilized directly or indirectly as a penalty or punishment save as so authorized. Legitimate publicity extends to the issuance of authorized documents, such as notices or decisions; but, apart from actual and final adjudication after all proceedings have been had, no publicity should reflect adversely upon any person, organization, product, or commodity of any kind in any manner otherwise than as required to carry on authorized agency functions and necessary in the administration thereof. It will be the duty of agencies not to permit informational releases to be utilized as penalties or to the injury of parties.

SECTION 9 (B). LICENSES

Agencies are required, with due regard for the rights or privileges of all the interested parties or persons adversely affected, to proceed with reasonable dispatch to conclude and decide proceedings on applications for licenses. They are not to withdraw a license without first giving the licensee notice in writing and an opportunity to demonstrate or achieve compliance with all lawful requirements except in cases of willfulness or

those in which public health, interest, or safety requires otherwise. In businesses of a continuing nature, no license expires until timely applications for new licenses or renewals are determined by the agency.

This section operates in all cases whether or not hearing is required, but it does not provide for a hearing where other statutes do not do so. Nor does it diminish statutory rights to a hearing. It does not confer licensing powers. The requirement of dispatch means that agencies must proceed as rapidly as is feasible and practicable, rather than at their own convenience. Undue delays are subject to correction by mandatory injunction pursuant to section 10. The exceptions to the second sentence, regarding revocations, apply only where the demonstrable facts fully and fairly warrant their application. Willfulness must be manifest. The same is true of "public health, interest, or safety." The standard of "public * * * interest" means a situation where clear and immediate necessity for the due execution of the laws overrides the equities or the injury to the licensee; the term does not confer upon agencies authority at will to ignore the requirement of notice and an opportunity to demonstrate compliance. However, this limitation does not apply to temporary permits or temporary licenses.

SECTION 10. JUDICIAL REVIEW

Section 10 on judicial review does not apply in any situation so far as there are involved matters with respect to which statutes preclude judicial review or agency action is by law committed to agency discretion.

This section requires adequate, fair, effective, complete, and just determination of the rights of any person in properly invoked proceedings.

Very rarely do statutes withhold judicial review. It has never been the policy of Congress to prevent the administration of its own statutes from being judicially confined to the scope of authority granted or to the objectives specified. Its policy could not be otherwise, for in such a case statutes would in effect be blank checks drawn to the credit of some administrative officer or board. The statutes of Congress are not merely advisory when they relate to administrative agencies, any more than in other cases. To preclude judicial review under this bill a statute, if not specific in withholding such review, must upon its face give clear and convincing evidence of an intent to withhold it. The mere failure to provide specially by statute for judicial review is certainly no evidence of intent to withhold review. Matters of discretion are necessarily exempted from the section, since otherwise courts would in effect supersede agency functioning. But that does not mean that questions of law properly presented are withdrawn from reviewing courts. Where laws are so broadly drawn that agencies have large discretion, the situation cannot be remedied by an administrative procedure act but must be treated by the revision of statutes conferring administrative powers. However, where statutory standards, definitions, or other grants of power deny or require action in given situations or confine an agency within limits as required by the Constitution, then the determination of the facts does not lie in agency discretion but must be supported by either the administrative or judicial record. In any case the existence of discretion does not prevent a person from bringing a review action but merely prevents him *pro tanto* from prevailing therein.

SECTION 10 (A). RIGHT OF COURT REVIEW

Any person suffering legal wrong because of any agency action, or adversely affected within the meaning of any statute, is entitled to judicial review.

This section confers a right of review upon any person adversely affected in fact by agency action or aggrieved within the meaning of any statute. The phrase "legal wrong" means such a wrong as is specified in section 10 (e). It means that something more than mere adverse personal effect must be shown in order to prevail—that is, that the adverse effect must be an illegal effect. Almost any governmental action may adversely affect somebody—as where rates or prices are fixed—but a complainant, in order to prevail, must show that the action is contrary to law in either substance or procedure. The law so made relevant is not only constitutional law but any and all applicable law.

SECTION 10 (B). FORMS OF ACTION

The technical form of proceeding for judicial review is any special proceeding provided by statute or, in the absence or inadequacy thereof, any relevant form of legal action (such as those for declaratory judgments or injunctions) in any court of competent jurisdiction. Moreover, agency action is also made subject to judicial review in any civil or criminal proceeding for enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.

The first sentence of this section is an express statutory recognition and adoption of the so-called common-law actions as being appropriate and authorized means of judicial review, operative whenever special statutory forms of judicial review are either lacking or insufficient. Declaratory judgment procedure, for example, may be operative before statutory forms of review are available and may be utilized to determine the validity or application of any agency action. By such an action the court must determine the validity or application of a rule or order, render a judicial declaration of rights, and so bind an agency upon the case stated and in the absence of a reversal. The expression "special statutory review" means not only special review proceedings wholly created by statute, but so-called common-law forms referred to and adopted by other statutes as the appropriate mode of review in given cases. The provision respecting "prior, adequate, and exclusive * * * review" in the second sentence is operative only where statutes, either expressly or as they are interpreted, require parties to resort to some special statutory form of judicial review which is prior in time and adequate to the case.

The section does not alter venue provisions under existing law, whether in connection with specially provided statutory review or the so-called nonstatutory or common-law-action variety. Under this and the other provisions of section 10 a proper reviewing court has full authority to render decision and grant relief:

SECTION 10 (C). REVIEWABLE AGENCY ACTS

Agency action made reviewable specially by statute or final agency action for which there is no other adequate judicial remedy is subject to judicial review. In addition, preliminary or procedural matters not

directly subject to review are reviewable upon the review of final actions. Except as statutes may expressly require otherwise, agency action is final for the purposes of the section whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule and provides that the action shall meanwhile be inoperative) for an appeal to superior agency authority.

"Final" action includes any effective or operative agency action for which there is no other adequate remedy in any court. Action which is automatically stayable on further proceedings invoked by a party is not final. "Reconsideration" includes reopening, rehearing, etc. The last clause, permitting agencies to require by rule that an appeal be taken to superior agency authority before judicial review may be sought, is designed primarily to implement the provisions of section 8 (a) pursuant to which an agency may permit an examiner to make the initial decision in a case which becomes the agency's decision in the absence of an appeal to or review by the agency. If there is such review or appeal, the examiner's initial decision becomes inoperative until the agency determines the matter. This section permits an agency also to require by rule that, if any party is not satisfied with the initial decision of a subordinate hearing officer, the party must first appeal to the agency (the decision meanwhile being inoperative) before resorting to the courts. In no case may appeal to "superior agency authority" be required by rule unless the administrative decision meanwhile is inoperative, because otherwise the effect of such a requirement would be to subject the party to the agency action and to repetitious administrative process without recourse. There is a fundamental inconsistency in requiring a person to continue "exhausting" administrative processes after administrative action has become, and while it remains, effective.

SECTION 10 (D). TEMPORARY RELIEF PENDING FULL REVIEW

Pending judicial review any agency may postpone the effective date of its action. Upon conditions and as may be necessary to prevent irreparable injury, any reviewing court may postpone the effective date of any agency action or preserve the status quo pending conclusion of review proceedings.

This section permits either agencies or courts, if the proper showing be made, to maintain the status quo. The section is in effect a statutory extension of rights pending judicial review, although the reviewing court must order the extension; or, to put the situation another way, statutes authorizing agency action are to be construed to extend rights pending judicial review and the exclusiveness of the administrative remedy is diminished so far as this section operates. While the section would not permit a court to grant an initial license, it provides intermediate judicial relief for every other situation in order to make judicial review effective. The authority granted is equitable and should be used by both agencies and courts to prevent irreparable injury or afford parties an adequate judicial remedy. Such relief would normally, if not always, be limited to the parties complainant and may be withheld in the absence of a substantial question for review. In determining whether agency action should be postponed, the court should take into account that persons other

than parties may be adversely affected by such postponement and in such cases the party seeking postponement may be required to furnish security to protect such other persons from loss resulting from postponement.

SECTION 10 (E). SCOPE OF COURT REVIEW

Reviewing courts are required to decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of any agency action. They must (A) compel action unlawfully withheld or unreasonably delayed and (B) hold unlawful any action, findings, or conclusions found to be (1) arbitrary or an abuse of discretion, (2) contrary to the Constitution, (3) contrary to statutes or statutory right, (4) without observance of procedure required by law, (5) unsupported by substantial evidence in any case reviewed upon the record of an agency hearing provided by statute, or (6) unwarranted by the facts so far as the latter are subject to trial de novo. In making these determinations the court is to consider the whole record or such parts as any party may cite, and due account must be taken of the rule of prejudicial error.

This section provides that questions of law are for courts rather than agencies to decide in the last analysis and it also lists the several categories of questions of law. Under it courts are required to determine the application or threatened application or questions respecting the validity or terms of any agency action notwithstanding the form of the proceeding or whether brought by private parties for review or by public officers or others for enforcement. It expressly recognizes the right of properly interested parties to compel agencies to act where they improvidently refuse to act. "Finding" and "conclusion" also mean failure to find or conclude as the law and the record may require. "Accordance with law" requires, among other things, a judicial determination of the authority or propriety of interpretative rules and statements of policy. "Short of statutory right" means that agencies are not authorized to give partial relief where a party demonstrates his right to the whole. Authorized relief must be granted by an agency to the full extent that entitlement is shown.

"Without observance of procedure required by law" means not only the procedures required and procedural rights conferred by this bill but any other procedures or procedural rights the law may require. Except in a few respects, this is not a measure conferring administrative powers but is one laying down definitions and stating limitations. These definitions and limitations must, to be sure, be interpreted and applied by agencies affected by them in the first instance. But the enforcement of the bill, by the independent judicial interpretation and application of its terms, is a function which is clearly conferred upon the courts in the final analysis. It will thus be the duty of reviewing courts to prevent avoidance of the requirements of the bill by any manner or form of indirection, and to determine the meaning of the words and phrases used. For example, in several provisions the expression "good cause" is used. The cause so specified must be interpreted by the context of the provision in which it is found and the purpose of the entire section and bill. Cause found must be real and demonstrable. If the agency is proceeding upon a statutory hearing and record, the cause will appear there; otherwise it must be

such that the agency may show the facts and considerations warranting the finding in any proceeding in which the finding is challenged. The same would be true in the case of findings other than of good cause, required in the bill. As has been said, these findings must in the first instance be made by the agency concerned but, in the final analysis, their propriety in law and on the facts must be sustainable upon inquiry by a reviewing court.

"Substantial evidence" means evidence which on the whole record is clearly substantial, plainly sufficient to support a finding or conclusion under the requirements of section 7 (c), and material to the issues. It is exceedingly important. Difficulty has come about by the practice of agencies and courts to rely upon something less—suspicion, surmise, implications, or plainly incredible evidence. Although the agency must do so in the first instance, under this bill it will be the duty of the courts to determine in the final analysis and in the exercise of their independent judgment whether on the whole of the proofs brought to their attention the evidence in a given instance is sufficiently substantial to support a finding, conclusion, or other agency action or inaction. In reviewing a case under this fifth category the court must base its judgment upon its own review of the entire record or so much thereof as may be cited by any party.

The sixth category, respecting the establishment of facts upon trial de novo, would require the reviewing court to determine the facts in any case of adjudication not subject to sections 7 and 8 or otherwise required to be reviewed exclusively on the record of a statutory agency hearing. It would also require the judicial determination of facts in connection with rule making or any other conceivable form of agency action to the extent that the facts were relevant to any pertinent issues of law presented. For example, statutes providing for "reparation orders," in which agencies determine damages and award money judgments, usually state that the money orders issued are merely prima facie evidence in the courts and the parties subject to them are permitted to introduce evidence in the court in which the enforcement action is pending. In other cases, the test is whether there has been a statutory administrative hearing of the facts which is adequate and exclusive for purposes of review. Thus, adjudications such as tax assessments not made upon a statutory administrative hearing and record may involve a trial of the facts in The Tax Court or the United States district courts. Where administrative agencies deny parties money to which they are entitled by statute or rule, the claimants may sue as for any other claim and in so doing try out the facts in the Court of Claims or United States district courts as the case may be. Where a court enforces or applies an administrative rule, the party to whom it is applied may for example offer evidence and show the facts upon which he bases a contention that he is not subject to the terms of the rule. Where for example an affected party claims in a judicial proceeding that a rule issued without an administrative hearing (and not required to be issued after such hearing) is invalid for some relevant reason of law, he may show the facts upon which he predicates such invalidity. In short, where a rule or order is not required by statute to be made after opportunity for agency hearing and to be reviewed solely upon the record thereof, the facts pertinent to any relevant question of law must be tried and determined de novo

by the reviewing court respecting either the validity or application of such rule or order—because facts necessary to the determination of any relevant question of law must be determined of record somewhere and, if Congress has not provided that an agency shall do so, then the record must be made in court.

The requirement of review upon “the whole record” means that courts may not look only to the case presented by one party, since other evidence may weaken or even indisputably destroy that case. The requirement that account shall be taken “of the rule of prejudicial error” means that a procedural omission which has been cured prior to the finality of the action involved by affording the party the procedure to which he was originally entitled is not a reversible error.

SECTION 11. EXAMINERS

Subject to the civil-service and other laws not inconsistent with this bill, agencies are required to appoint such examiners as may be necessary for proceedings under sections 7 and 8, who are to be assigned to cases in rotation so far as practicable and to perform no inconsistent duties. They are removable only for good cause determined by the Civil Service Commission after opportunity for hearing and upon the record thereof. They are to receive compensation prescribed by the Commission independently of agency recommendations or ratings. One agency may, with the consent of another and upon selection by the Commission, borrow examiners from another. The Commission is given the necessary powers to operate under this section.

That examiners be “qualified and competent” requires the Civil Service Commission to fix appropriate qualifications and the agencies to seek fit persons. In view of the tenure and compensation requirements of the section, designed to make examiners largely independent in matters of tenure and compensation, self-interest and due concern for the proper performance of public functions will inevitably move agencies to secure the highest type of examiners. The section thus changes the present situation, in which examiners are mere employees of an agency. The entire tradition of the Civil Service Commission is directed toward security of tenure, and that system is put to appropriate use in the present case.

Additional powers are conferred upon the Commission. It must afford any examiner an opportunity for a hearing before acceding to an agency request for removal, and even then its action would be subject to judicial review. The hearing and decision would be made under sections 7 and 8 of this bill.

The requirement of assignment of examiners “in rotation” prevents an agency from disfavoring an examiner by rendering him inactive, although examiners may be permitted to specialize and be assigned mainly to cases for which they have so qualified.

In the matter of examiners’ compensation the section adds greatly to the Commission’s powers and function. It must prescribe and adjust examiners’ salaries, independently of agency ratings and recommendations. The stated inapplicability of specified sections of the Classification Act carries into effect that authority. The Commission would exercise its powers by classifying examiners’ positions and, upon customary examination through its agents, shift examiners to superior classifications or higher grades as their experience and

duties may require. Agencies may make, and the Commission may consider, recommendations; and the Commission might consult the agency, as it now does in setting up positions or reclassifying positions, but it would act upon its own responsibility and, with the objects of the bill in mind. Examiners' salaries should be high enough to attract superior personnel.

The provision permitting agencies to borrow examiners is intended to permit those who do not need full-time examiners to borrow them as needed as well as to aid those agencies which may become temporarily or occasionally insufficiently staffed.

SECTION 12. CONSTRUCTION AND EFFECT

Nothing in the bill is to diminish constitutional rights or limit or repeal additional requirements of law. Requirements of evidence and procedure are to apply equally to agencies and private persons except as otherwise provided by law. The unconstitutionality of any portion or application of the bill is not to affect other portions or applications. Agencies are granted all authority necessary to comply with the bill. Subsequent legislation is not to modify the bill except as it may do so expressly. The bill would become law three months after its approval except that sections 7 and 8 take effect six months after approval, the requirements of section 11 become effective a year after approval, and no requirement is mandatory as to any agency proceeding initiated prior to the effective date of such requirement.

The word "initiated" in the final clause of the section means a proceeding formally begun as by the issuance of a complaint by the agency (irrespective of prior charges or investigations) or of notice of a rule-making hearing. As to new cases, the effective dates provided in section 12 are deferred longer so far as sections 7 and 8 are concerned in order to afford agencies ample time to prepare and make any adjustments required in their procedures. The selection of examiners under section 11 is deferred for a year in order to permit present military service personnel an opportunity to qualify for these positions.

This section, however, merely provides formal matters of construction and effect. Except as it expands or defers the prior sections of the bill, it supplies mainly the time of taking effect of the several provisions of the bill. Otherwise the earlier provisions are operative according to their terms. Any inconsistent agency action or statute is in effect repealed. No agency action taken or refused would be lawful except as done in full compliance with all applicable provisions of the bill and subject to the judicial review provided. No agreed waiver of its provisions would suffice unless entirely voluntary and without any manner or form of coercion.

Like some other statutes, judicial enforcement in case by case fashion is not the only method of enforcing the bill. For willful failure to comply, funds may be withheld or officers or employees may be subject to disciplinary action or dismissal. However, for most practical purposes it is to the agencies that the Congress and the people must look for fair administration of the laws and compliance with this bill. Judicial review is of utmost importance, but it can be operative in relatively few cases because of the cost and general hazards of litigation. It is indispensable since its mere existence generally precludes the arbitrary exercise of powers or assumption of powers

not granted. Yet, in the vast majority of cases the agency concerned usually speaks the first and last word. For that reason the agencies must make the first, primary, and most far-reaching effort to comply with the terms and the spirit of this bill.

This bill is not, of course, the final word. It is a beginning. If it becomes law, changes may be made in the light of further experience; and additions should be made.

APPENDIX A

COMMITTEE AMENDMENT

It is proposed by the Committee amendment to make the following changes in S. 7: Portions of the bill in which no change is proposed are printed in roman, with matter proposed to be omitted shown in black brackets, and new matter is printed in italic:

A BILL To improve the administration of justice by prescribing fair administrative procedure

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [That]

TITLE

SECTION 1. This Act may be cited as the "Administrative Procedure Act".

DEFINITIONS

SEC. 2. As used in this Act—

(a) AGENCY.—"Agency" means each authority (whether or not within or subject to review by another agency) of the Government of the United States other than Congress, the courts, or the governments of the possessions, Territories, or the District of Columbia. Nothing in this Act shall be construed to repeal delegations of authority as provided by law. Except as to the requirements of section 3, there shall be excluded from the operation of this Act (1) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them, (2) courts martial and military commissions, (3) military or naval authority exercised in the field in time of war or in occupied territory, or (4) functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947, and the functions conferred by the following statutes: Selective Training and Service Act of 1940; Contract Settlement Act of 1944; Surplus Property Act of 1944.

(b) PERSON AND PARTY.—"Person" includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies. "Party" includes any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any agency proceeding; but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes.

(c) RULE AND RULE MAKING.—"Rule" means the whole or any part of any agency statement of general or particular applicability and future effect¹ designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of any agency [.] and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor, or of valuations, costs, or accounting, or practices bearing upon any of the foregoing. "Rule making" means agency process for the formulation, amendment, or repeal of a rule [and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor, or of valuations, costs, or accounting, or practices bearing upon any of the foregoing].

¹ The change of the language to embrace specifically rules of "particular" as well as "general" applicability is necessary in order to avoid controversy and assure coverage of rule making addressed to named persons. The Senate committee report so interprets the provision, and the other changes are likewise in conformity with the Senate committee report (p. 11). The phrase "future effect" does not preclude agencies from considering and, so far as legally authorized, dealing with past transactions in prescribing rules for the future.

(d) ORDER AND ADJUDICATION.—“Order” means the whole or any part of the final disposition (whether affirmative, negative, *injunctive*,² or declaratory in form) of any agency in any matter other than rule making but including licensing. “Adjudication” means agency process for the formulation of an order.

(e) LICENSE AND LICENSING.—“License” includes the whole or part of any agency permit, certificate, approval, registration, charter, membership, statutory exemption, or other form of permission. “Licensing” includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license.

(f) SANCTION AND RELIEF.—“Sanction” includes the whole or part of any agency (1) prohibition, requirement, limitation, or other condition affecting the freedom of any person; (2) withholding of relief; (3) imposition of any form of penalty or fine; (4) destruction, taking, seizure, or withholding of property; (5) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees; (6) requirement, revocation, or suspension of a license; or (7) taking of other compulsory or restrictive action. “Relief” includes the whole or part of any agency (1) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy; (2) recognition of any claim, right, immunity, privilege, exemption, or exception; or (3) taking of any other action *upon the application or petition of, and*³ beneficial to, any person.

(g) AGENCY PROCEEDING AND ACTION.—“Agency proceeding” means any agency process as defined in subsections (c), (d), and (e) of this section. [For the purposes of section 10,⁴] “Agency action” includes the whole or part of every agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.

PUBLIC INFORMATION

SEC. 3. Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of an agency—

(a) RULES.—Every agency shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organization, *including delegations by the agency of final authority and the established places at which, and methods whereby, the public may secure information or make submittals or requests*; [(3)] (2) statements of the general course and method by which its [rule making and adjudicating⁵] functions are channeled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations; and [(4)] (3) substantive rules adopted as authorized by law and statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public, *but not rules addressed to and served upon named persons in accordance with law.*⁶ No person shall in any manner be required to resort to organization or procedure not so published.

(b) OPINIONS AND ORDERS.—Every agency shall publish or, in accordance with published rule, make available to public inspection all final opinions or orders in the adjudication of cases (except those required for good cause to be held confidential and not cited as precedents) *and all rules.*⁷

² This addition is prompted by the fact that some people interpret “future effect” as used in defining rule making, to include injunctive action, whereas the latter is traditionally and clearly adjudication. It is made even more necessary that this matter be clarified because of the amendment of section 2 (c) to embrace clearly particularized rule making as set forth in note 1.

³ The change is necessary to make it clear that “relief” means only action taken upon the application or petition of a party. Agencies frequently, of course, may take action, beneficial or otherwise, on their own motion.

⁴ As the bill now stands the term “agency action” is not used in other sections, but the term ought not be limited to section 10 since it may be found useful in later years in connection with additions and amendments.

⁵ The first insert is necessary to show in which separate set of rules delegations of authority should appear. The Senate committee report states that the effect of any one of the first three classifications requires the publication of subdelegations of authority to subordinate officers (p. 12), and, of course, to other agencies, but certainly such publication should not be required in all three sets of rules. It should be noted that there will be no requirement to list in the rules the names of specific individuals to whom power is delegated unless such a designation is now required by law. The listing of subdelegations of final authority requires only the naming of the specific office or agency to which a delegation of final authority has been made. The phrase “rule making and adjudicating” is eliminated because the introductory clauses of the section make the necessary exemptions.

⁶ The added language is necessary in order not to fill the Federal Register with a great mass of particularized rule making which has always been satisfactorily handled without general publication.

⁷ This change supplements the change explained in note 6. If some rules are not published in the Federal Register, then clearly they should be made available in the same manner as orders.

(c) **PUBLIC RECORDS.**—Save as otherwise required by statute, matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found.

RULE MAKING

* **SEC. 4.** Except to the extent that there is involved (1) any military, naval, or foreign affairs function of the United States or (2) any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts—

(a) **NOTICE.**—General notice of proposed rule making shall be published in the Federal Register (*unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law*)⁸ and shall include (1) a statement of the time, place, and nature of public rule making proceedings; (2) reference to the authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved. Except where notice or hearing is required by statute, this subsection shall not apply to interpretative rules, general statements of policy, rules of agency organization, procedure, or practice, or in any situation in which the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(b) **PROCEDURES.**—After notice required by this section, the agency shall afford interested persons an opportunity to participate in the rule making through submission of written data, views, or argument with or without opportunity to present the same orally in any manner; and, after consideration of all relevant matter presented, the agency shall incorporate in any rules adopted a concise general statement of their basis and purpose. Where rules are required by [law] statute to be made [upon] on the record after opportunity for [or upon]⁹ an agency hearing, the requirements of sections 7 and 8 shall apply in place of the provisions of this subsection.

(c) **EFFECTIVE DATES.**—The required publication or service of any substantive rule (other than one granting or recognizing exemption or relieving restriction or interpretative rules and statements of policy) shall be made not less than thirty days prior to the effective date thereof except as otherwise provided by the agency upon good cause found and published with the rule.

(d) **PETITIONS.**—Every agency shall accord any interested person the right to petition for the issuance, amendment, or repeal of a rule.

ADJUDICATION

SEC. 5. In every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved (1) any matter subject to a subsequent trial of the law and the facts de novo in any court; (2) the selection or tenure of an officer or employee of the United States other than examiners appointed pursuant to section 11; (3) proceedings in which decisions rest solely on inspections, tests, or elections; (4) the conduct of military, naval, or foreign affairs functions; (5) cases in which an agency is acting as an agent for a court; and (6) the certification of employee representatives—

(a) **NOTICE.**—Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, and nature thereof; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) the matters of fact and law asserted. In instances in which private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the times and places for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(b) **PROCEDURE.**—The agency shall afford all interested parties opportunity for (1) the submission and consideration of facts, argument, offers of settlement, or

⁸ The added language supplements the changes explained in notes 6 and 7. There is no reason to burden the Federal Register with notices addressed to particular parties who have been personally served or otherwise have notice.

⁹ The change is made to conform to the language used in the introductory clause of section 5 respecting adjudications. A statute may, in terms, require a rule or order to be made upon the record of a hearing, or in the usual case be interpreted as manifesting a Congressional intention so to require, and in either situation sections 7 and 8 would apply save as other exceptions are operative.

proposals of adjustment where time, the nature of the proceeding, and the public interest permit and (2), to the extent that the parties are unable so to determine any controversy by consent, hearing and decision upon notice and in conformity with sections 7 and 8.

(c) SEPARATION OF FUNCTIONS.—The same officers who preside at the reception of evidence pursuant to section 7 shall make the recommended decision or initial decision required by section 8 except where such officers become unavailable to the agency. Save to the extent required for the disposition of ex parte matters as authorized by law, no such officer shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate; nor shall such officer be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency. No officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency in any case shall, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 8 except as witness or counsel in public proceedings. This subsection shall not apply in determining applications for initial licenses or [the past reasonableness of rates;] *to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers;*¹⁰ nor shall it be applicable in any manner to the agency or any member or members of the body comprising the agency.

(d) DECLARATORY ORDERS.—The agency is authorized in its sound discretion, with like effect as in the case of other orders, to issue a declaratory order to terminate a controversy or remove uncertainty.

ANCILLARY MATTERS

SEC. 6. Except as otherwise provided in this Act—

(a) APPEARANCE.—Any person compelled to appear in person before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. Every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in any agency proceeding. So far as the [responsible] *orderly*¹¹ conduct of public business permits, any interested person may appear before any agency or its responsible officers or employees for the presentation, adjustment, or determination of any issue, request, or controversy in any proceeding (*interlocutory, summary, or otherwise*)¹² or in connection with any agency function [including stop order or other summary actions]. Every agency shall proceed with reasonable dispatch to conclude any matter presented to it except that due regard shall be had for the convenience and necessity of the parties or their representatives. Nothing herein shall be construed either to grant or to deny to any person who is not a lawyer the right to appear for or represent others before any agency or in any agency proceeding.

(b) INVESTIGATIONS.—No process, requirement of a report, inspection, or other investigative act or demand shall be issued, made, or enforced in any manner or for any purpose except as authorized by law. Every person compelled to submit data or evidence shall be entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

(c) SUBPENAS.—Agency subpoenas authorized by law shall be issued to any party upon request and, as may be required by rules of procedure, upon a statement or showing of general relevance and reasonable scope of the evidence sought. Upon contest the court shall sustain any such subpoena or similar process or demand to the extent that it is found to be in accordance with law and, in any proceeding for enforcement, shall issue an order requiring the appearance of the witness or the production of the evidence or data *within a reasonable time* under penalty of punishment for contempt in case of contumacious failure [to do so] *to comply*.¹³

¹⁰ The exemption is broadened to include facilities and practices, which are quite as important as rates and often involved in the determination of rate questions. It also seems a wise clarification to use the broader term "validity or application" instead of merely "past reasonableness." It is understood that the reason for this exemption is that these proceedings are often consolidated with rule making so that, unless the exemption is properly made, either rule making will be restricted or the consolidation of proceedings may be impossible.

¹¹ The word "orderly" is substituted because "responsible" is used later in the same sentence in a somewhat different sense.

¹² It seems desirable to specify that interlocutory proceedings are included. The change does not restrict the section. Stop-order proceedings are one form of interlocutory action.

¹³ The additions are made to clarify the intended meaning of the provisions.

(d) **DENIALS.**—Prompt notice shall be given of the denial in whole or in part of any written application, petition, or other request of any interested person made in connection with any agency proceeding. Except in affirming a prior denial or where the denial is self-explanatory, such notice shall be accompanied by a simple statement of *procedural or other grounds*.¹⁴

HEARINGS

SEC. 7. In hearings which section 4 or 5 requires to be conducted pursuant to this section—

(a) **PRESIDING OFFICERS.**—There shall preside at the taking of evidence (1) the agency, (2) one or more members of the body which comprises the agency, or (3) one or more examiners appointed as provided in this Act; but nothing in this Act shall be deemed to supersede the conduct of specified classes of proceedings in whole or part by or before boards or other officers specially provided for by or designated pursuant to statute. The functions of all presiding officers and of officers participating in decisions in conformity with section 8 shall be conducted in an impartial manner. Any such officer may at any time withdraw if he deems himself disqualified; and, upon the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification of any such officer, the agency shall determine the matter as a part of the record and decision in the case.

(b) **HEARING POWERS.**—Officers presiding at hearings shall have authority, subject to the published rules of the agency and within its powers, to (1) administer oaths and affirmations, (2) issue subpoenas authorized by law, (3) rule upon offers of proof and receive relevant evidence, (4) take or cause depositions to be taken whenever the ends of justice would be served thereby, (5) regulate the course of the hearing, (6) hold conferences for the settlement or simplification of the issues by consent of the parties, (7) dispose of procedural requests or similar matters, (8) make decisions or recommend decisions in conformity with section 8, and (9) take any other action authorized by agency rule consistent with this Act.

(c) **EVIDENCE.**—Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. Any [evidence] oral or documentary evidence¹⁵ may be received, but every agency shall as a matter of policy provide for the exclusion of *irrelevant*,¹⁶ immaterial, [and] or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except *upon consideration of the whole record or such portions thereof as may be cited by any party and*¹⁷ as supported by *and in accordance with the* [relevant] reliable, [and] probative, and substantial evidence.¹⁸ Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses any agency may, where the interest of any party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(d) **RECORD.**—The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision in accordance with section 8 and, upon payment of lawfully prescribed costs, shall be made available to the parties. Where any agency decision rests on official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the contrary.

DECISIONS

SEC. 8. In cases in which a hearing is required to be conducted in conformity with section 7—

(a) **ACTION BY SUBORDINATES.**—In cases in which the agency has not presided at the reception of the evidence, the officer who presided (or, in cases not subject to subsection (c) of section 5, any other officer or officers qualified to preside at

¹⁴ The added language is designed to clarify the provision by making it clear that, if the ground for denial is procedural, the agency must say so.

¹⁵ The prior form involved an unnecessary circumlocution of language.

¹⁶ The word "relevant" has been stricken from the latter part of this sentence and the word "irrelevant" has been inserted at this point where it more appropriately belongs, to achieve the same purpose.

¹⁷ That the whole of the relevant record must be considered is the rule laid down in section 10 (e) on judicial review, but some hypercritical mind might contend that the omission to specify such consideration at the agency stage of proceedings was intentional and meant that the agency is not required to consider the whole record.

¹⁸ The insertion of the word "substantial" is made for the same reason as the insertion explained in note 17. Obviously the agency will proceed in accordance with the evidence which it finds reliable, probative, and substantial—there is no reason why the bill should not say so.

hearings pursuant to section 7) shall initially decide the case or the agency shall require (in specific cases or by general rule) the entire record to be certified to it for initial decision. Whenever such officers make the initial decision and in the absence of either an appeal to the agency or review upon motion of the agency within time provided by rule, such decision shall without further proceedings then become the decision of the agency. On appeal from or review of the initial decisions of such officers the agency shall, except as it may limit the issues upon notice or by rule, have all the powers which it would have in making the initial decision. Whenever the agency makes the initial decision without having presided at the reception of the evidence, such officers shall first recommend a decision except that in rule making or determining applications for initial licenses (1) in lieu thereof the agency may issue a tentative decision or any of its responsible officers may recommend a decision or (2) any such procedure may be omitted in any case in which the agency finds upon the record that due and timely execution of its function imperatively and unavoidably so requires.

(b) **SUBMITTALS AND DECISIONS.**—Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings or conclusions. *The record shall show the ruling upon each such finding, conclusion, or exception presented.*¹⁹ All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record;²⁰ and (2) the appropriate rule, order, sanction, relief, or denials thereof.

SANCTIONS AND POWERS

SEC. 9. In the exercise of any power or authority—

(a) **IN GENERAL.**—No sanction shall be imposed or substantive rule or order be issued except within jurisdiction delegated to the agency and as authorized by law.

(b) **LICENSES.**—In any case in which application is made for a license required by law the agency, with due regard to the rights or privileges of all the interested parties or adversely affected persons and with reasonable dispatch, shall set and complete any proceedings required to be conducted pursuant to sections 7 and 8 of this Act or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, no withdrawal, suspension, revocation, or annulment of any license shall be lawful unless, prior to the institution of agency proceedings therefor, facts or conduct which may warrant such action shall have been called to the attention of the licensee by the agency in writing and the licensee shall have been accorded opportunity to demonstrate or achieve compliance with all lawful requirements. In any case in which the licensee has, in accordance with agency rules, made timely and sufficient application for a renewal or a new license, no license with reference to any activity of a continuing nature shall expire until such application shall have been finally determined by the agency.

JUDICIAL REVIEW

SEC. 10. Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—

(a) **RIGHT OF REVIEW.**—Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

(b) **FORM AND VENUE OF ACTION.**—The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. Agency action shall be subject to judicial review in civil or criminal

¹⁹ The sentence is added for the purpose of requiring agencies to note their rulings somewhere on the record in order to preclude later controversy as to what the agency had done.

²⁰ "Reasons or" and "on the record" are inserted for purposes of clarification. "Basis" ought to include "reasons," but use of both words will preclude controversy. "Presented" should mean "on the record," or the protection of both agencies and parties, and the matter should be made specific.

proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.

(c) **REVIEWABLE ACTS.**—Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedure, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. Except as otherwise expressly required by statute, agency action *otherwise final* shall be final for the purposes of this subsection whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule and provides that the action meanwhile shall be inoperative) for an appeal to superior agency authority.²¹

(d) **INTERIM RELIEF.**—Pending judicial review any agency is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, every reviewing court (including every court to which a case may be taken on appeal from or upon application for certiorari or other writ to a reviewing court) is authorized to issue all necessary and appropriate process to postpone the effective date of any agency action or to preserve status or rights pending conclusion of the review proceedings.

(e) **SCOPE OF REVIEW.**—So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, *an abuse of discretion*,²² or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by [the parties] *any party*,²³ and due account shall be taken of the rule of prejudicial error.

EXAMINERS

Sec. 11. Subject to the civil-service and other laws to the extent not inconsistent with this Act, there shall be appointed by and for each agency as many qualified and competent examiners as may be necessary for proceedings pursuant to sections 7 and 8, who shall be assigned to cases in rotation so far as practicable and shall perform no duties inconsistent with their duties and responsibilities as examiners. Examiners shall be removable by the agency in which they are employed only for good cause established and determined by the Civil Service Commission (hereinafter called the Commission) after opportunity for hearing and upon the record thereof. Examiners shall receive compensation prescribed by the Commission independently of agency recommendations or ratings and in accordance with the Classification Act of 1923, as amended, except that the provisions of paragraphs (2) and (3) of subsection (b) of section 7 of said Act, as amended, and the provisions of section 9 of said Act, as amended, shall not be applicable. Agencies occasionally or temporarily insufficiently staffed may utilize examiners selected by the Commission from and with the consent of other

²¹ The change is made to clarify the provision by making specifically the language of the bill the explanation given in the Senate Committee report (p. 27). It should be noted that section 8 (a) permits agencies to provide by rule for appeals to them from initial decisions of examiners. That provision, as well as this provision of section 10 (c), would authorize an agency to adopt rules requiring a party to take a timely appeal to the agency before resorting to the courts. A party cannot wilfully fail to exhaust his administrative remedies and then, after the agency action has become operative, either secure a suspension of the agency action by a belated appeal to the agency, or resort to court without having given the agency an opportunity to determine the questions raised. If he so fails he is precluded from judicial review by the application of the time-honored doctrine of exhaustion of administrative remedies. This is not to say that after the right to an administrative appeal has lapsed an agency may not, on proper application, either reconsider an adjudication or receive proposals for the modification of a rule, with or without suspending the operation of the agency action involved.

²² The change is designed to make it clear that S. 7 preserves judicial review of abuses of discretion.

²³ This change is to conform the language with the similar provision in sec. 7 (c).

agencies. For the purposes of this section, the Commission is authorized to make investigations, require reports by agencies, issue reports, including an annual report to the Congress, promulgate rules, appoint such advisory committees as may be deemed necessary, recommend legislation, subpoena witnesses or records, and pay witness fees as established for the United States courts.

CONSTRUCTION AND EFFECT

SEC. 12. Nothing in this Act shall be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. If any provision of this Act or the application thereof is held invalid, the remainder of this Act or other applications of such provision shall not be affected. Every agency is granted all authority necessary to comply with the requirements of this Act through the issuance of rules or otherwise. No subsequent legislation shall be held to supersede or modify the provisions of this Act except to the extent that such legislation shall do so expressly. This Act shall take effect three months after its approval except that sections 7 and 8 shall take effect six months after such approval, the requirement of the selection of examiners pursuant to section 11 shall not become effective until one year after such approval, and no procedural requirement shall be mandatory as to any agency proceeding initiated prior to the effective date of such requirement.

APPENDIX B

LETTER OF ATTORNEY GENERAL

APRIL 3, 1946.

HON. FRANCIS E. WALTER,
*Chairman, Subcommittee on Administrative Law,
Committee on the Judiciary,
House of Representatives, Washington, D. C.*

MY DEAR CONGRESSMAN WALTER: I have carefully reviewed the revised version of H. R. 4941, a bill to improve the administration of justice by prescribing fair administrative procedure, as contained in the attached document entitled "Final Draft, April 2, 1946."

The changes indicated in the enclosed draft, as explained by the notes appended thereto, are not objectionable to the Department of Justice. They may, in general, be described as clarifications of the language and intention of H. R. 4941, as introduced by Congressman Sumners on December 10, 1945. As you know, I recommended the enactment of H. R. 4941 in my letter to Congressman Sumners dated October 19, 1945.

With kind personal regards.

Sincerely yours,

TOM C. CLARK, *Attorney General.*

57



79TH CONGRESS
2D SESSION

S. 7

IN THE HOUSE OF REPRESENTATIVES

Referred to the Committee on the Judiciary

Reported with an amendment, committed to the Committee of the Whole House
on the State of the Union, and ordered to be printed

AN ACT

To improve the administration of justice by prescribing fair administrative procedure.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 ~~That this Act may be cited as the “Administrative Procedure~~
4 ~~Act”.~~

5 DEFINITIONS

6 ~~SEC. 2. As used in this Act—~~

7 (a) AGENCY.—“Agency” means each authority
8 (whether or not within or subject to review by another
9 agency) of the Government of the United States other
10 than Congress, the courts, or the governments of the pos-

1 sessions, Territories, or the District of Columbia. Nothing
 2 in this Act shall be construed to repeal delegations of author-
 3 ity as provided by law. Except as to the requirements of
 4 section 3, there shall be excluded from the operation of
 5 this Act ~~(1)~~ agencies composed of representatives of the
 6 parties or of representatives of organizations of the parties
 7 to the disputes determined by them; ~~(2)~~ courts martial and
 8 military commissions; ~~(3)~~ military or naval authority
 9 exercised in the field in time of war or in occupied terri-
 10 tory; or ~~(4)~~ functions which by law expire on the termina-
 11 tion of present hostilities, within any fixed period thereafter,
 12 or before July 1, 1947, and the functions conferred by the
 13 following statutes: Selective Training and Service Act of
 14 1940; Contract Settlement Act of 1944; Surplus Property
 15 Act of 1944.

16 ~~(b)~~ PERSON AND PARTY.—“Person” includes indi-
 17 viduals, partnerships, corporations, associations, or public
 18 or private organizations of any character other than agencies.
 19 “Party” includes any person or agency named or admitted
 20 as a party, or properly seeking and entitled as of right to
 21 be admitted as a party, in any agency proceeding; but noth-
 22 ing herein shall be construed to prevent an agency from
 23 admitting any person or agency as a party for limited
 24 purposes.

25 ~~(c)~~ RULE AND RULE MAKING.—“Rule” means the

1 whole or any part of any agency statement of general ap-
2 plicability designed to implement, interpret, or prescribe law
3 or policy or to describe the organization, procedure, or
4 practice requirements of any agency. "Rule making" means
5 agency process for the formulation, amendment, or repeal
6 of a rule and includes the approval or prescription for the
7 future of rates, wages, corporate or financial structures or
8 reorganizations thereof, prices, facilities, appliances, serv-
9 ices, or allowances therefor, or of valuations, costs, or
10 accounting, or practices bearing upon any of the foregoing.

11 ~~(d)~~ ORDER AND ADJUDICATION.—"Order" means the
12 whole or any part of the final disposition (whether affirma-
13 tive, negative, or declaratory in form) of any agency in
14 any matter other than rule making but including licensing.
15 "Adjudication" means agency process for the formulation
16 of an order.

17 ~~(e)~~ LICENSE AND LICENSING.—"License" includes the
18 whole or part of any agency permit, certificate, approval,
19 registration, charter, membership, statutory exemption, or
20 other form of permission. "Licensing" includes agency
21 process respecting the grant, renewal, denial, revocation,
22 suspension, annulment, withdrawal, limitation, amendment,
23 modification, or conditioning of a license.

24 ~~(f)~~ SANCTION AND RELIEF.—"Sanction" includes the
25 whole or part of any agency (1) prohibition, requirement,

1 limitation, or other condition affecting the freedom of any
 2 person; ~~(2)~~ withholding of relief; ~~(3)~~ imposition of any
 3 form of penalty or fine; ~~(4)~~ destruction, taking, seizure, or
 4 withholding of property; ~~(5)~~ assessment of damages, reim-
 5 bursement, restitution, compensation, costs, charges, or fees;
 6 ~~(6)~~ requirement, revocation, or suspension of a license; or
 7 ~~(7)~~ taking of other compulsory or restrictive action. "Re-
 8 lief" includes the whole or part of any agency ~~(1)~~ grant of
 9 money, assistance, license, authority, exemption, exception,
 10 privilege, or remedy; ~~(2)~~ recognition of any claim, right,
 11 immunity, privilege, exemption, or exception; or ~~(3)~~ taking
 12 of any other action beneficial to any person.

13 ~~(g)~~ AGENCY PROCEEDING AND ACTION.—"Agency
 14 proceeding" means any agency process as defined in subsec-
 15 tions ~~(c)~~, ~~(d)~~, and ~~(e)~~ of this section. For the purposes of
 16 section 10, "agency action" includes the whole or part of
 17 every agency rule, order, license, sanction, relief, or the
 18 equivalent or denial thereof, or failure to act.

19 PUBLIC INFORMATION

20 SEC. 3. Except to the extent that there is involved ~~(1)~~
 21 any function of the United States requiring secrecy in the
 22 public interest or ~~(2)~~ any matter relating solely to the in-
 23 ternal management of an agency—

24 ~~(a)~~ RULES.—Every agency shall separately state and
 25 currently publish in the Federal Register ~~(1)~~ descriptions of

1 its central and field organization; ~~(2)~~ the established places
 2 and methods whereby the public may secure information or
 3 make submittals or requests; ~~(3)~~ statements of the general
 4 course and method by which its rule making and adjudicating
 5 functions are channeled and determined, including the nature
 6 and requirements of all formal or informal procedures avail-
 7 able as well as forms and instructions as to the scope and
 8 contents of all papers, reports, or examinations; and ~~(4)~~
 9 substantive rules adopted as authorized by law and statements
 10 of general policy or interpretations formulated and adopted
 11 by the agency for the guidance of the public.—No person
 12 shall in any manner be required to resort to organization or
 13 procedure not so published.

14 ~~(b)~~ OPINIONS AND ORDERS.—Every agency shall pub-
 15 lish or, in accordance with published rule, make available to
 16 public inspection all final opinions or orders in the adjudica-
 17 tion of cases except those required for good cause to be held
 18 confidential and not cited as precedents.

19 ~~(c)~~ PUBLIC RECORDS.—Save as otherwise required by
 20 statute, matters of official record shall in accordance with pub-
 21 lished rule be made available to persons properly and directly
 22 concerned except information held confidential for good cause
 23 found.

24 RULE MAKING

25 SEC. 4. Except to the extent that there is involved ~~(1)~~

1 any military, naval, or foreign affairs function of the United
2 States or ~~(2)~~ any matter relating to agency management or
3 personnel or to public property, loans, grants, benefits, or
4 contracts—

5 ~~(a)~~ NOTICE.—General notice of proposed rule making
6 shall be published in the Federal Register and shall include
7 ~~(1)~~ a statement of the time, place, and nature of public rule
8 making proceedings; ~~(2)~~ reference to the authority under
9 which the rule is proposed; and ~~(3)~~ either the terms or sub-
10 stance of the proposed rule or a description of the subjects
11 and issues involved. Except where notice or hearing is re-
12 quired by statute, this subsection shall not apply to inter-
13 pretative rules, general statements of policy, rules of agency
14 organization, procedure, or practice, or in any situation in
15 which the agency for good cause finds ~~(and incorporates~~
16 ~~the finding and a brief statement of the reasons therefor in~~
17 ~~the rules issued)~~ that notice and public procedure thereon
18 are impracticable, unnecessary, or contrary to the public
19 interest.

20 ~~(b)~~ PROCEDURES.—After notice required by this sec-
21 tion, the agency shall afford interested persons an oppor-
22 tunity to participate in the rule making through submission
23 of written data, views, or argument with or without oppor-
24 tunity to present the same orally in any manner; and, after
25 consideration of all relevant matter presented, the agency

1 shall incorporate in any rules adopted a concise general
 2 statement of their basis and purpose. Where rules are
 3 required by law to be made upon the record after oppor-
 4 tunity for or upon an agency hearing, the requirements of
 5 sections 7 and 8 shall apply in place of the provisions of
 6 this subsection.

7 ~~(c) EFFECTIVE DATES.~~—The required publication or
 8 service of any substantive rule (other than one granting or
 9 recognizing exemption or relieving restriction or interpreta-
 10 tive rules and statements of policy) shall be made not less
 11 than thirty days prior to the effective date thereof except
 12 as otherwise provided by the agency upon good cause found
 13 and published with the rule.

14 ~~(d) PETITIONS.~~—Every agency shall accord any inter-
 15 ested person the right to petition for the issuance, amend-
 16 ment or repeal of a rule.

17 ADJUDICATION

18 SEC. 5. In every case of adjudication required by statute
 19 to be determined on the record after opportunity for an
 20 agency hearing, except to the extent that there is involved
 21 ~~(1)~~ any matter subject to a subsequent trial of the law and
 22 the facts de novo in any court; ~~(2)~~ the selection or tenure
 23 of an officer or employee of the United States other than
 24 examiners appointed pursuant to section 11; ~~(3)~~ proceed-
 25 ings in which decisions rest solely on inspections, tests, or

1 elections; ~~(4)~~ the conduct of military, naval, or foreign
 2 affairs functions; ~~(5)~~ cases in which an agency is acting as
 3 an agent for a court; and ~~(6)~~ the certification of employee
 4 representatives—

5 ~~(a)~~ NOTICE.—Persons entitled to notice of an agency
 6 hearing shall be timely informed of ~~(1)~~ the time, place, and
 7 nature thereof; ~~(2)~~ the legal authority and jurisdiction under
 8 which the hearing is to be held; and ~~(3)~~ the matters of fact
 9 and law asserted. In instances in which private persons are
 10 the moving parties, other parties to the proceeding shall give
 11 prompt notice of issues controverted in fact or law; and in
 12 other instances agencies may by rule require responsive
 13 pleading. In fixing the times and places for hearings, due
 14 regard shall be had for the convenience and necessity of the
 15 parties or their representatives.

16 ~~(b)~~ PROCEDURE.—The agency shall afford all in-
 17 terested parties opportunity for ~~(1)~~ the submission and con-
 18 sideration of facts, arguments, offers of settlement, or propo-
 19 sals of adjustment where time, the nature of the proceeding,
 20 and the public interest permit and ~~(2)~~; to the extent that
 21 the parties are unable so to determine any controversy by
 22 consent, hearing and decision upon notice and in conformity
 23 with sections 7 and 8.

24 ~~(c)~~ SEPARATION OF FUNCTIONS.—The same officers

1 who preside at the reception of evidence pursuant to section
2 7 shall make the recommended decision or initial decision
3 required by section 8 except where such officers become un-
4 available to the agency. Save to the extent required for the
5 disposition of ex parte matters as authorized by law, no such
6 officer shall consult any person or party on any fact in issue
7 unless upon notice and opportunity for all parties to partici-
8 pate; nor shall such officer be responsible to or subject to the
9 supervision or direction of any officer, employee, or agent
10 engaged in the performance of investigative or prosecuting
11 functions for any agency. No officer, employee, or agent
12 engaged in the performance of investigative or prosecuting
13 functions for any agency in any case shall, in that or a
14 factually related case, participate or advise in the decision,
15 recommended decision, or agency review pursuant to section
16 8 except as witness or counsel in public proceedings. This
17 subsection shall not apply in determining applications for
18 initial licenses or the past reasonableness of rates; nor shall
19 it be applicable in any manner to the agency or any member
20 or members of the body comprising the agency.

21 ~~(d)~~ DECLARATORY ORDERS.—The agency is author-
22 ized in its sound discretion, with like effect as in the case of
23 other orders, to issue a declaratory order to terminate a con-
24 troversy or remove uncertainty.

ANCILLARY MATTERS

SEC. 6. Except as otherwise provided in this Act—

(a) APPEARANCE.—Any person compelled to appear in person before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. Every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in any agency proceeding. So far as the responsible conduct of public business permits, any interested person may appear before any agency or its responsible officers or employees for the presentation, adjustment, or determination of any issue, request, or controversy in any proceeding or in connection with any agency function, including stop-order or other summary actions. Every agency shall proceed with reasonable dispatch to conclude any matter presented to it except that due regard shall be had for the convenience and necessity of the parties or their representatives. Nothing herein shall be construed either to grant or to deny to any person who is not a lawyer the right to appear for or represent others before any agency or in any agency proceeding.

(b) INVESTIGATIONS.—No process, requirement of a report, inspection, or other investigative act or demand shall

1 be issued, made, or enforced in any manner or for any
2 purpose except as authorized by law. Every person com-
3 pelled to submit data or evidence shall be entitled to retain,
4 or, on payment of lawfully prescribed costs, procure a copy
5 or transcript thereof, except that in a nonpublic investigatory
6 proceeding the witness may for good cause be limited to
7 inspection of the official transcript of his testimony.

8 (c) SUBPENAS.—Agency subpoenas authorized by law
9 shall be issued to any party upon request and, as may be
10 required by rules of procedure, upon a statement or showing
11 of general relevance and reasonable scope of the evidence
12 sought. Upon contest the court shall sustain any such
13 subpoena or similar process or demand to the extent that it is
14 found to be in accordance with law and, in any proceeding
15 for enforcement, shall issue an order requiring the appear-
16 ance of the witness or the production of the evidence or data
17 under penalty of punishment for contempt in case of con-
18 tumacious failure to do so.

19 (d) DENIALS.—Prompt notice shall be given of the
20 denial in whole or in part of any written application, petition,
21 or other request of any interested person made in connection
22 with any agency proceeding. Except in affirming a prior
23 denial or where the denial is self-explanatory, such notice
24 shall be accompanied by a simple statement of grounds.

HEARINGS

SEC. 7. In hearings which section 4 or 5 requires to be conducted pursuant to this section—

(a) PRESIDING OFFICERS.—There shall preside at the taking of evidence (1) the agency, (2) one or more members of the body which comprises the agency, or (3) one or more examiners appointed as provided in this Act; but nothing in this Act shall be deemed to supersede the conduct of specified classes of proceedings in whole or part by or before boards or other officers specially provided for by or designated pursuant to statute. The functions of all presiding officers and of officers participating in decisions in conformity with section 8 shall be conducted in an impartial manner. Any such officer may at any time withdraw if he deems himself disqualified; and, upon the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification of any such officer, the agency shall determine the matter as a part of the record and decision in the case.

(b) HEARING POWERS.—Officers presiding at hearings shall have authority, subject to the published rules of the agency and within its powers, to (1) administer oaths and affirmations, (2) issue subpoenas authorized by law, (3) rule upon offers of proof and receive relevant evidence, (4) take or cause depositions to be taken whenever the ends of justice would be served thereby, (5) regulate the course of the hear-

1 ing; ~~(6)~~ hold conferences for the settlement or simplifica-
2 tion of the issues by consent of the parties; ~~(7)~~ dispose of pro-
3 cedural requests or similar matters; ~~(8)~~ make decisions or
4 recommend decisions in conformity with section 8; and ~~(9)~~
5 take any other action authorized by agency rule consistent
6 with this Act.

7 ~~(c)~~ EVIDENCE.—Except as statutes otherwise provide,
8 the proponent of a rule or order shall have the burden of
9 proof. Any evidence, oral or documentary, may be received,
10 but every agency shall as a matter of policy provide for the
11 exclusion of immaterial and unduly repetitious evidence and
12 no sanction shall be imposed or rule or order be issued
13 except as supported by relevant, reliable, and probative evi-
14 dence. Every party shall have the right to present his case
15 or defense by oral or documentary evidence, to submit rebut-
16 tal evidence, and to conduct such cross-examination as may
17 be required for a full and true disclosure of the facts. In
18 rule making or determining claims for money or benefits
19 or applications for initial licenses any agency may, where
20 the interest of any party will not be prejudiced thereby, adopt
21 procedures for the submission of all or part of the evidence
22 in written form.

23 ~~(d)~~ RECORD.—The transcript of testimony and exhibits,
24 together with all papers and requests filed in the proceeding,
25 shall constitute the exclusive record for decision in accordance

1 with section 8 and, upon payment of lawfully prescribed
 2 costs, shall be made available to the parties. Where any
 3 agency decision rests on official notice of a material fact not
 4 appearing in the evidence in the record, any party shall on
 5 timely request be afforded an opportunity to show the
 6 contrary.

7 DECISION

8 SEC. 8. In cases in which a hearing is required to be
 9 conducted in conformity with section 7—

10 (a) ACTION BY SUBORDINATES.—In cases in which
 11 the agency has not presided at the reception of the evidence,
 12 the officer who presided (or, in cases not subject to subsection
 13 (e) of section 5, any other officer or officers qualified to
 14 preside at hearings pursuant to section 7) shall initially
 15 decide the case or the agency shall require (in specific cases
 16 or by general rule) the entire record to be certified to it
 17 for initial decision. Whenever such officers make the initial
 18 decision and in the absence of either an appeal to the agency
 19 or review upon motion of the agency within time provided
 20 by rule, such decision shall without further proceedings then
 21 become the decision of the agency. On appeal from or
 22 review of the initial decisions of such officers the agency shall,
 23 except as it may limit the issues upon notice or by rule, have
 24 all the powers which it would have in making the initial
 25 decision. Whenever the agency makes the initial decision

1 without having presided at the reception of the evidence, such
2 officers shall first recommend a decision except that in rule
3 making or determining applications for initial licenses ~~(1)~~
4 in lieu thereof the agency may issue a tentative decision
5 or any of its responsible officers may recommend a decision
6 or ~~(2)~~ any such procedure may be omitted in any case in
7 which the agency finds upon the record that due and timely
8 execution of its function imperatively and unavoidably so
9 requires.

10 ~~(b)~~ SUBMITTALS AND DECISIONS.—Prior to each rec-
11 ommended, initial, or tentative decision, or decision upon
12 agency review of the decision of subordinate officers the
13 parties shall be afforded a reasonable opportunity to submit
14 for the consideration of the officers participating in such de-
15 cisions ~~(1)~~ proposed findings and conclusions, or ~~(2)~~ excep-
16 tions to the decisions or recommended decisions of subordinate
17 officers or to tentative agency decisions, and ~~(3)~~ supporting
18 reasons for such exceptions or proposed findings or conclu-
19 sions. All decisions ~~(including initial, recommended, or~~
20 ~~tentative decisions)~~ shall become a part of the record and
21 include a statement of ~~(1)~~ findings and conclusions, as well
22 as the basis therefor, upon all the material issues of fact, law,
23 or discretion presented; and ~~(2)~~ the appropriate rule, order,
24 sanction, relief, or denial thereof.

SANCTIONS AND POWERS

SEC. 9. In the exercise of any power or authority—

(a) IN GENERAL.—No sanction shall be imposed or substantive rule or order be issued except within jurisdiction delegated to the agency and as authorized by law.

(b) LICENSES.—In any case in which application is made for a license required by law the agency, with due regard to the rights or privileges of all the interested parties or adversely affected persons and with reasonable dispatch, shall set and complete any proceedings required to be conducted pursuant to sections 7 and 8 of this Act or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, no withdrawal, suspension, revocation, or annulment of any license shall be lawful unless, prior to the institution of agency proceedings therefor, facts or conduct which may warrant such action shall have been called to the attention of the licensee by the agency in writing and the licensee shall have been accorded opportunity to demonstrate or achieve compliance with all lawful requirements. In any case in which the licensee has, in accordance with agency rules, made timely and sufficient application for a renewal or a new license, no license with reference to any activity of a continuing nature shall expire

1 until such application shall have been finally determined
2 by the agency.

3 JUDICIAL REVIEW

4 SEC. 10. Except so far as ~~(1)~~ statutes preclude judicial
5 review or ~~(2)~~ agency action is by law committed to agency
6 discretion—

7 ~~(a)~~ RIGHT OF REVIEW.—Any person suffering legal
8 wrong because of any agency action, or adversely affected or
9 aggrieved by such action within the meaning of any relevant
10 statute, shall be entitled to judicial review thereof.

11 ~~(b)~~ FORM AND VENUE OF ACTION.—The form of pro-
12 ceeding for judicial review shall be any special statutory re-
13 view proceeding relevant to the subject matter in any court
14 specified by statute or, in the absence or inadequacy thereof,
15 any applicable form of legal action (including actions for
16 declaratory judgments or writs of prohibitory or mandatory
17 injunction or habeas corpus) in any court of competent juris-
18 diction. Agency action shall be subject to judicial review in
19 civil or criminal proceedings for judicial enforcement except
20 to the extent that prior, adequate, and exclusive opportunity
21 for such review is provided by law.

22 ~~(c)~~ REVIEWABLE ACTS.—Every agency action made
23 reviewable by statute and every final agency action for which
24 there is no other adequate remedy in any court shall be sub-

1 ject to judicial review. Any preliminary, procedural, or
2 intermediate agency action or ruling not directly review-
3 able shall be subject to review upon the review of the final
4 agency action. Except as otherwise expressly required by
5 statute, agency action shall be final whether or not there has
6 been presented or determined any application for a declar-
7 atory order, for any form of reconsideration, or (unless the
8 agency otherwise requires by rule) for an appeal to superior
9 agency authority.

10 (d) INTERIM RELIEF.—Pending judicial review any
11 agency is authorized, where it finds that justice so requires,
12 to postpone the effective date of any action taken by it. Upon
13 such conditions as may be required and to the extent necessary
14 to prevent irreparable injury, every reviewing court (includ-
15 ing every court to which a case may be taken on appeal from
16 or upon application for certiorari or other writ to a reviewing
17 court) is authorized to issue all necessary and appropriate
18 process to postpone the effective date of any agency action or
19 to preserve status or rights pending conclusion of the review
20 proceedings.

21 (e) SCOPE OF REVIEW.—So far as necessary to deci-
22 sion and where presented the reviewing court shall decide
23 all relevant questions of law, interpret constitutional and
24 statutory provisions, and determine the meaning or applica-
25 bility of the terms of any agency action. It shall (A) compel

1 agency action unlawfully withheld or unreasonably delayed;
2 and ~~(B)~~ hold unlawful and set aside agency action, findings,
3 and conclusions found to be ~~(1)~~ arbitrary, capricious, or
4 otherwise not in accordance with law; ~~(2)~~ contrary to con-
5 stitutional right, power, privilege, or immunity; ~~(3)~~ in
6 excess of statutory jurisdiction, authority, or limitations, or
7 short of statutory right; ~~(4)~~ without observance of procedure
8 required by law; ~~(5)~~ unsupported by substantial evidence
9 in any case subject to the requirements of sections 7 and 8 or
10 otherwise reviewed on the record of an agency hearing pro-
11 vided by statute; or ~~(6)~~ unwarranted by the facts to the
12 extent that the facts are subject to trial de novo by the
13 reviewing court. In making the foregoing determinations
14 the court shall review the whole record or such portions
15 thereof as may be cited by the parties, and due account shall
16 be taken of the rule of prejudicial error.

17 EXAMINERS

18 SEC. 41. Subject to the civil-service and other laws to
19 the extent not inconsistent with this Act, there shall be ap-
20 pointed by and for each agency as many qualified and
21 competent examiners as may be necessary for proceedings
22 pursuant to sections 7 and 8, who shall be assigned to cases
23 in rotation so far as practicable and shall perform no duties
24 inconsistent with their duties and responsibilities as examin-
25 ers. Examiners shall be removable by the agency in which

1 they are employed only for good cause established and de-
2 termined by the Civil Service Commission (hereinafter called
3 the Commission) after opportunity for hearing and upon the
4 record thereof. Examiners shall receive compensation pre-
5 scribed by the Commission independently of agency recom-
6 mendations or ratings and in accordance with the Classifi-
7 cation Act of 1923, as amended, except that the provisions
8 of paragraphs (2) and (3) of subsection (b) of section 7
9 of said Act, as amended, and the provisions of section 9 of
10 said Act, as amended, shall not be applicable. Agencies
11 occasionally or temporarily insufficiently staffed may utilize
12 examiners selected by the Commission from and with the
13 consent of other agencies. For the purposes of this section,
14 the Commission is authorized to make investigations, require
15 reports by agencies, issue reports, including an annual re-
16 port to the Congress, promulgate rules, appoint such advisory
17 committees as may be deemed necessary, recommend legisla-
18 tion, subpoena witnesses or records, and pay witness fees as
19 established for the United States courts.

20 CONSTRUCTION AND EFFECT

21 SEC. 12. Nothing in this Act shall be held to diminish
22 the constitutional rights of any person or to limit or repeal
23 additional requirements imposed by statute or otherwise recog-
24 nized by law. Except as otherwise required by law, all re-
25 quirements or privileges relating to evidence or procedure

1 shall apply equally to agencies and persons. If any provision
 2 of this Act or the application thereof is held invalid, the
 3 remainder of this Act or other applications of such provision
 4 shall not be affected. Every agency is granted all authority
 5 necessary to comply with the requirements of this Act through
 6 the issuance of rules or otherwise. No subsequent legislation
 7 shall be held to supersede or modify the provisions of this Act
 8 except to the extent that such legislation shall do so expressly.
 9 This Act shall take effect three months after its approval
 10 except that sections 7 and 8 shall take effect six months
 11 after such approval, the requirement of the selection of
 12 examiners pursuant to section 11 shall not become effective
 13 until one year after such approval, and no procedural
 14 requirement shall be mandatory as to any agency proceeding
 15 initiated prior to the effective date of such requirement.

16 TITLE

17 SECTION 1. *This Act may be cited as the "Adminis-*
 18 *trative Procedure Act".*

19 DEFINITIONS

20 SEC. 2. *As used in this Act—*

21 (a) AGENCY.—“Agency” means each authority (whether
 22 or not within or subject to review by another agency) of the
 23 Government of the United States other than Congress, the
 24 courts, or the governments of the possessions, Territories, or

1 the District of Columbia. Nothing in this Act shall be con-
 2 strued to repeal delegations of authority as provided by law.
 3 Except as to the requirements of section 3, there shall be ex-
 4 cluded from the operation of this Act (1) agencies composed
 5 of representatives of the parties or of representatives of or-
 6 ganizations of the parties to the disputes determined by
 7 them, (2) courts martial and military commissions, (3)
 8 military or naval authority exercised in the field in time
 9 of war or in occupied territory, or (4) functions which by
 10 law expire on the termination of present hostilities, within
 11 any fixed period thereafter, or before July 1, 1947, and
 12 the functions conferred by the following statutes: Selective
 13 Training and Service Act of 1940; Contract Settlement Act
 14 of 1944; Surplus Property Act of 1944.

15 (b) *PERSON AND PARTY*.—"Person" includes indi-
 16 viduals, partnerships, corporations, association, or public
 17 or private organizations of any character other than agencies.
 18 "Party" includes any person or agency named or admitted
 19 as a party, or properly seeking and entitled as of right to
 20 be admitted as a party, in any agency proceeding; but noth-
 21 ing herein shall be construed to prevent an agency from
 22 admitting any person or agency as a party for limited
 23 purposes.

24 (c) *RULE AND RULE MAKING*.—"Rule" means the
 25 whole or any part of any agency statement of general or

1 particular applicability and future effect designed to imple-
 2 ment, interpret, or prescribe law or policy or to describe the
 3 organization, procedure, or practice requirements of any
 4 agency and includes the approval or prescription for the
 5 future of rates, wages, corporate or financial structures or
 6 reorganizations thereof, prices, facilities, appliances, serv-
 7 ices or allowances therefor or of valuations, costs, or ac-
 8 counting, or practices bearing upon any of the foregoing.
 9 “Rule making” means agency process for the formulation,
 10 amendment, or repeal of a rule.

11 (d) ORDER AND ADJUDICATION.—“Order” means the
 12 whole or any part of the final disposition (whether affirma-
 13 tive, negative, injunctive, or declaratory in form) of any
 14 agency in any matter other than rule making but including
 15 licensing. “Adjudication” means agency process for the
 16 formulation of an order.

17 (e) LICENSE AND LICENSING.—“License” includes the
 18 whole or part of any agency permit, certificate, approval,
 19 registration, charter, membership, statutory exemption or
 20 other form of permission. “Licensing” includes agency
 21 process respecting the grant, renewal, denial, revocation,
 22 suspension, annulment, withdrawal, limitation amendment,
 23 modification, or conditioning of a license.

24 (f) SANCTION AND RELIEF.—“Sanction” includes the
 25 whole or part of any agency (1) prohibition, requirement,

1 limitation, or other condition affecting the freedom of any
 2 person; (2) withholding of relief; (3) imposition of any
 3 form of penalty or fine; (4) destruction, taking, seizure, or
 4 withholding of property; (5) assessment of damages, reim-
 5 bursement, restitution, compensation; costs, charges, or fees;
 6 (6) requirement, revocation, or suspension of a license; or
 7 (7) taking of other compulsory or restrictive action. "Re-
 8 lief" includes the whole or part of any agency (1) grant of
 9 money, assistance, license, authority, exemption, exception,
 10 privilege, or remedy; (2) recognition of any claim, right,
 11 immunity, privilege, exemption, or exception; or (3) taking
 12 of any other action upon the application or petition of, and
 13 beneficial to, any person.

14 (g) AGENCY PROCEEDING AND ACTION.—"Agency
 15 proceeding" means any agency process as defined in subsec-
 16 tions (c), (d), and (e) of this section. "Agency action"
 17 includes the whole or part of every agency rule, order, license,
 18 sanction, relief, or the equivalent or denial thereof, or failure
 19 to act.

20 PUBLIC INFORMATION

21 SEC. 3. Except to the extent that there is involved (1)
 22 any function of the United States requiring secrecy in the
 23 public interest or (2) any matter relating solely to the in-
 24 ternal management of an agency—

25 (a) RULES.—Every agency shall separately state and

1 currently publish in the Federal Register (1) descriptions
2 of its central and field organization including delegations by
3 the agency of final authority and the established places at
4 which, and methods whereby, the public may secure infor-
5 mation or make submittals or requests; (2) statements of
6 the general course and method by which its functions are
7 channeled and determined, including the nature and require-
8 ments of all formal or informal procedures available as well
9 as forms and instructions as to the scope and contents of all
10 papers, reports, or examinations; and (3) substantive rules
11 adopted as authorized by law and statements of general
12 policy or interpretations formulated and adopted by the
13 agency for the guidance of the public, but not rules addressed
14 to and served upon named persons in accordance with law.
15 No person shall in any manner be required to resort to organ-
16 ization or procedure not so published.

17 (b) *OPINIONS AND ORDERS.*—Every agency shall pub-
18 lish or, in accordance with published rule, make available to
19 public inspection all final opinions or orders in the adjudica-
20 tion of cases (except those required for good cause to be held
21 confidential and not cited as precedents) and all rules.

22 (c) *PUBLIC RECORDS.*—Save as otherwise required by
23 statute, matters of official record shall in accordance with
24 published rule be made available to persons properly and

1 *directly concerned except information held confidential for*
2 *good cause found.*

3 *RULE MAKING*

4 *SEC. 4. Except to the extent that there is involved (1)*
5 *any military, naval, or foreign affairs function of the United*
6 *States or (2) any matter relating to agency management or*
7 *personnel or to public property, loans, grants, benefits, or*
8 *contracts—*

9 *(a) NOTICE.—General notice of proposed rule making*
10 *shall be published in the Federal Register (unless all per-*
11 *sons subject thereto are named and either personally served*
12 *or otherwise have actual notice thereof in accordance with*
13 *law) and shall include (1) a statement of the time, place,*
14 *and nature of public rule making proceedings; (2) refer-*
15 *ence to the authority under which the rule is proposed;*
16 *and (3) either the terms or substance of the proposed rule*
17 *or a description of the subjects and issues involved. Except*
18 *where notice or hearing is required by statute, this subsection*
19 *shall not apply to interpretative rules, general statements*
20 *of policy, rules of agency organization, procedure, or prac-*
21 *tice, or in any situation in which the agency for good cause*
22 *finds (and incorporates the finding and a brief statement of*
23 *the reasons therefor in the rules issued) that notice and*
24 *public procedure thereon are impracticable, unnecessary,*
25 *or contrary to the public interest.*

1 (b) *PROCEDURES*.—After notice required by this sec-
2 tion, the agency shall afford interested persons an oppor-
3 tunity to participate in the rule making through submission
4 of written data, views, or arguments with or without op-
5 portunity to present the same orally in any manner; and,
6 after consideration of all relevant matter presented, the
7 agency shall incorporate in any rules adopted a concise
8 general statement of their basis and purpose. Where rules
9 are required by statute to be made on the record after
10 opportunity for an agency hearing, the requirements of
11 sections 7 and 8 shall apply in place of the provisions of
12 this subsection.

13 (c) *EFFECTIVE DATES*.—The required publication or
14 service of any substantive rule (other than one granting or
15 recognizing exemption or relieving restriction or interpretative
16 rules and statements of policy) shall be made not less than
17 thirty days prior to the effective date thereof except as other-
18 wise provided by the agency upon good cause found and
19 published with the rule.

20 (d) *PETITIONS*.—Every agency shall accord any inter-
21 ested person the right to petition for the issuance, amendment,
22 or repeal of a rule.

23 ADJUDICATION

24 *SEC. 5.* In every case of adjudication required by statute
25 to be determined on the record after opportunity for an

1 agency hearing, except to the extent that there is involved
 2 (1) any matter subject to a subsequent trial of the law and
 3 the facts *de novo* in any court; (2) the selection or tenure
 4 of an officer or employee of the United States other than
 5 examiners appointed pursuant to section 11; (3) proceed-
 6 ings in which decisions rest solely on inspections, tests, or
 7 elections; (4) the conduct of military, naval, or foreign-
 8 affairs functions; (5) cases in which an agency is acting as
 9 an agent for a court; and (6) the certification of employee
 10 representatives—

11 (a) NOTICE.—Persons entitled to notice of an agency
 12 hearing shall be timely informed of (1) the time, place, and
 13 nature thereof; (2) the legal authority and jurisdiction under
 14 which the hearing is to be held; and (3) the matters of fact
 15 and law asserted. In instances in which private persons are
 16 the moving parties, other parties to the proceeding shall give
 17 prompt notice of issues controverted in fact or law; and in
 18 other instances agencies may by rule require responsive
 19 pleading. In fixing the times and places for hearings, due
 20 regard shall be had for the convenience and necessity of the
 21 parties or their representatives.

22 (b) PROCEDURE.—The agency shall afford all in-
 23 terested parties opportunity for (1) the submission and con-
 24 sideration of facts, argument, offers of settlement, or propo-
 25 sals of adjustment where time, the nature of the proceeding,

1 and the public interest permit, and (2) to the extent that the
2 parties are unable so to determine any controversy by con-
3 sent, hearing, and decision upon notice and in conformity
4 with sections 7 and 8.

5 (c) *SEPARATION OF FUNCTIONS.*—The same officers
6 who preside at the reception of evidence pursuant to section 7
7 shall make the recommended decision or initial decision re-
8 quired by section 8 except where such officers become un-
9 available to the agency. Save to the extent required for the
10 disposition of *ex parte* matters as authorized by law, no such
11 officer shall consult any person or party on any fact in issue
12 unless upon notice and opportunity for all parties to partici-
13 pate; nor shall such officer be responsible to or subject to the
14 supervision or direction of any officer, employee, or agent
15 engaged in the performance of investigative or prosecuting
16 functions for any agency. No officer, employee, or agent
17 engaged in the performance of investigative or prosecuting
18 functions for any agency in any case shall, in that or a
19 factually related case, participate or advise in the decision,
20 recommended decision, or agency review pursuant to section
21 8 except as witness or counsel in public proceedings. This
22 subsection shall not apply in determining applications for
23 initial licenses or to proceedings involving the validity or
24 application of rates, facilities, or practices of public utilities
25 or carriers; nor shall it be applicable in any manner to the

1 agency or any member or members of the body comprising
2 the agency.

3 (d) *DECLARATORY ORDERS.*—The agency is author-
4 ized in its sound discretion, with like effect as in the case of
5 other orders, to issue a declaratory order to terminate a con-
6 troversy or remove uncertainty.

7 *ANCILLARY MATTERS*

8 *SEC. 6.* Except as otherwise provided in this Act—

9 (a) *APPEARANCE.*—Any person compelled to appear in
10 person before any agency or representative thereof shall be
11 accorded the right to be accompanied, represented, and
12 advised by counsel or, if permitted by the agency, by other
13 qualified representative. Every party shall be accorded the
14 right to appear in person or by or with counsel or other
15 duly qualified representative in any agency proceeding. So
16 far as the orderly conduct of public business permits, any
17 interested person may appear before any agency or its
18 responsible officers or employees for the presentation, adjust-
19 ment, or determination of any issue, request, or controversy
20 in any proceeding (interlocutory, summary, or otherwise) or
21 in connection with any agency function. Every agency shall
22 proceed with reasonable dispatch to conclude any matter pre-
23 sented to it except that due regard shall be had for the con-
24 venience and necessity of the parties or their representatives.
25 Nothing herein shall be construed either to grant or to deny

1 to any person who is not a lawyer the right to appear for or
2 represent others before any agency or in any agency
3 proceeding.

4 (b) INVESTIGATIONS.—No process, requirement of a
5 report, inspection, or other investigative act or demand shall
6 be issued, made, or enforced in any manner or for any
7 purpose except as authorized by law. Every person com-
8 pelled to submit data or evidence shall be entitled to retain
9 or, on payment of lawfully prescribed costs, procure a copy
10 or transcript thereof, except that in a nonpublic investigatory
11 proceeding the witness may for good cause be limited to
12 inspection of the official transcript of his testimony.

13 (c) SUBPENAS.—Agency subpoenas authorized by law
14 shall be issued to any party upon request and, as may be
15 required by rules of procedure, upon a statement or showing
16 of general relevance and reasonable scope of the evidence
17 sought. Upon contest the court shall sustain any such
18 subpoena or similar process or demand to the extent that it is
19 found to be in accordance with law and, in any proceeding
20 for enforcement, shall issue an order requiring the appear-
21 ance of the witness or the production of the evidence or data
22 within a reasonable time under penalty of punishment for
23 contempt in case of contumacious failure to comply.

24 (d) DENIALS.—Prompt notice shall be given of the
25 denial in whole or in part of any written application, petition,

1 or other request of any interested person made in connection
 2 with any agency proceeding. Except in affirming a prior
 3 denial or where the denial is self-explanatory, such notice
 4 shall be accompanied by a simple statement of procedural
 5 or other grounds.

6 HEARINGS

7 SEC. 7. In hearings which section 4 or 5 requires to be
 8 conducted pursuant to this section—

9 (a) *PRESIDING OFFICERS.*—There shall preside at the
 10 taking of evidence (1) the agency, (2) one or more mem-
 11 bers of the body which comprises the agency, or (3) one
 12 or more examiners appointed as provided in this Act; but
 13 nothing in this Act shall be deemed to supersede the conduct
 14 of specified classes of proceedings in whole or part by or
 15 before boards or other officers specially provided for by or
 16 designated pursuant to statute. The functions of all presiding
 17 officers and of officers participating in decisions in conformity
 18 with section 8 shall be conducted in an impartial manner.
 19 Any such officer may at any time withdraw if he deems him-
 20 self disqualified; and, upon the filing in good faith of a timely
 21 and sufficient affidavit of personal bias or disqualification of
 22 any such officer, the agency shall determine the matter as a
 23 part of the record and decision in the case.

24 (b) *HEARING POWERS.*—Officers presiding at hearings
 25 shall have authority, subject to the published rules of the

1 agency and within its powers, to (1) administer oaths and
2 affirmations, (2) issue subpoenas authorized by law, (3) rule
3 upon offers of proof and receive relevant evidence, (4) take
4 or cause depositions to be taken whenever the ends of justice
5 would be served thereby, (5) regulate the course of the hear-
6 ing, (6) hold conferences for the settlement or simplification
7 of the issues by consent of the parties, (7) dispose of pro-
8 cedural requests or similar matters, (8) make decisions or
9 recommend decisions in conformity with section 8, and
10 (9) take any other action authorized by agency rule con-
11 sistent with this Act.

12 (c) EVIDENCE.—Except as statutes otherwise provide,
13 the proponent of a rule or order shall have the burden of
14 proof. Any oral or documentary evidence may be received,
15 but every agency shall as a matter of policy provide for the
16 exclusion of irrelevant, immaterial, or unduly repetitious
17 evidence and no sanction shall be imposed or rule or order
18 be issued except upon consideration of the whole record or
19 such portions thereof as may be cited by any party and
20 as supported by and in accordance with the reliable, pro-
21 bative, and substantial evidence. Every party shall have
22 the right to present his case or defense by oral or docu-
23 mentary evidence, to submit rebuttal evidence, and to con-
24 duct such cross-examination as may be required for a full
25 and true disclosure of the facts. In rule making or deter-

1 mining claims for money or benefits or applications for
2 initial licenses any agency may, where the interest of any
3 party will not be prejudiced thereby, adopt procedures for
4 the submission of all or part of the evidence in written form.

5 (b) *RECORD*.—The transcript of testimony and exhibits,
6 together with all papers and requests filed in the proceeding,
7 shall constitute the exclusive record for decision in accord-
8 ance with section 8 and, upon payment of lawfully pre-
9 scribed costs, shall be made available to the parties. Where
10 any agency decision rests on official notice of a material fact
11 not appearing in the evidence in the record, any party shall
12 on timely request be afforded an opportunity to show the
13 contrary.

14 DECISIONS

15 *SEC. 8. In cases in which a hearing is required to be*
16 *conducted in conformity with section 7—*

17 (a) *ACTION BY SUBORDINATES*.—In cases in which
18 the agency has not presided at the reception of the evidence,
19 the officer who presided (or, in cases not subject to subsection
20 (c) of section 5, any other officer or officers qualified to
21 preside at hearings pursuant to section 7) shall initially
22 decide the case or the agency shall require (in specific cases
23 or by general rule) the entire record to be certified to it
24 for initial decision. Whenever such officers make the initial
25 decision and in the absence of either an appeal to the agency

1 or review upon motion of the agency within time provided
2 by rule, such decision shall without further proceedings then
3 become the decision of the agency. On appeal from or
4 review of the initial decisions of such officers the agency shall,
5 except as it may limit the issues upon notice or by rule, have
6 all the powers which it would have in making the initial
7 decision. Whenever the agency makes the initial decision
8 without having presided at the reception of the evidence,
9 such officers shall first recommend a decision except that
10 in rule making or determining applications for initial licenses
11 (1) in lieu thereof the agency may issue a tentative decision
12 or any of its responsible officers may recommend a decision
13 or (2) any such procedure may be omitted in any case in
14 which the agency finds upon the record that due and timely
15 execution of its function imperatively and unavoidably so
16 requires.

17 (b) SUBMITTALS AND DECISIONS.—Prior to each rec-
18 ommended, initial, or tentative decision, or decision upon
19 agency review of the decision of subordinate officers the parties
20 shall be afforded a reasonable opportunity to submit for the
21 consideration of the officers participating in such decisions
22 (1) proposed findings and conclusions, or (2) exceptions
23 to the decisions or recommended decisions of subordinate
24 officers or to tentative agency decisions, and (3) supporting
25 reasons for such exceptions or proposed findings or conclu-

1 sions. The record shall show the ruling upon each such find-
 2 ing, conclusion, or exception presented. All decisions (in-
 3 cluding initial, recommended, or tentative decisions) shall
 4 become a part of the record and include a statement of (1)
 5 findings and conclusions, as well as the reasons or basis there-
 6 for, upon all the material issues of fact, law, or discretion
 7 presented on the record; and (2) the appropriate rule, order,
 8 sanction, relief, or denial thereof.

9 SANCTIONS AND POWERS

10 SEC. 9. In the exercise of any power or authority—

11 (a) IN GENERAL.—No sanction shall be imposed or
 12 substantive rule or order be issued except within jurisdiction
 13 delegated to the agency and as authorized by law.

14 (b) LICENSES.—In any case in which application is
 15 made for a license required by law the agency, with due re-
 16 gard to the rights or privileges of all the interested parties or
 17 adversely affected persons and with reasonable dispatch, shall
 18 set and complete any proceedings required to be conducted
 19 pursuant to sections 7 and 8 of this Act or other proceedings
 20 required by law and shall make its decision. Except in cases
 21 of willfulness or those in which public health, interest, or safety
 22 requires otherwise, no withdrawal, suspension, revocation, or
 23 annulment of any license shall be lawful unless, prior to the
 24 institution of agency proceedings therefor, facts or conduct
 25 which may warrant such action shall have been called to the

1 attention of the licensee by the agency in writing and the
2 licensee shall have been accorded opportunity to demonstrate
3 or achieve compliance with all lawful requirements. In any
4 case in which the licensee has, in accordance with agency
5 rules, made timely and sufficient application for a renewal or
6 a new license, no license with reference to any activity of a
7 continuing nature shall expire until such application shall
8 have been finally determined by the agency.

9 *JUDICIAL REVIEW*

10 *SEC. 10. Except so far as (1) statutes preclude judicial*
11 *review or (2) agency action is by law committed to agency*
12 *discretion—*

13 *(a) RIGHT OF REVIEW.—Any person suffering legal*
14 *wrong because of any agency action, or adversely affected*
15 *or aggrieved by such action within the meaning of any*
16 *relevant statute, shall be entitled to judicial review thereof.*

17 *(b) FORM AND VENUE OF ACTION.—The form of pro-*
18 *ceeding for judicial review shall be any special statutory*
19 *review proceeding relevant to the subject matter in any court*
20 *specified by statute or, in the absence or inadequacy thereof,*
21 *any applicable form of legal action (including actions for*
22 *declaratory judgments or writs of prohibitory or mandatory*
23 *injunction or habeas corpus) in any court of competent juris-*
24 *diction. Agency action shall be subject to judicial review in*
25 *civil or criminal proceedings for judicial enforcement except*

1 to the extent that prior, adequate, and exclusive opportunity
2 for such review is provided by law.

3 (c) *REVIEWABLE ACTS.*—Every agency action made
4 reviewable by statute and every final agency action for which
5 there is no other adequate remedy in any court shall be sub-
6 ject to judicial review. Any preliminary, procedural, or in-
7 termediate agency action or ruling not directly reviewable
8 shall be subject to review upon the review of the final agency
9 action. Except as otherwise expressly required by statute,
10 agency action otherwise final shall be final for the purposes
11 of this subsection whether or not there has been presented
12 or determined any application for a declaratory order, for
13 any form of reconsideration, or (unless the agency otherwise
14 requires by rule and provides that the action meanwhile shall
15 be inoperative) for an appeal to superior agency authority.

16 (d) *INTERIM RELIEF.*—Pending judicial review any
17 agency is authorized, where it finds that justice so requires,
18 to postpone the effective date of any action taken by it. Upon
19 such conditions as may be required and to the extent necessary
20 to prevent irreparable injury, every reviewing court (includ-
21 ing every court to which a case may be taken on appeal from
22 or upon application for certiorari or other writ to a reviewing
23 court) is authorized to issue all necessary and appropriate
24 process to postpone the effective date of any agency action or

1 *to preserve status or rights pending conclusion of the review*
2 *proceedings.*

3 (c) *SCOPE OF REVIEW.*—*So far as necessary to deci-*
4 *sion and where presented the reviewing court shall decide*
5 *all relevant questions of law, interpret constitutional and*
6 *statutory provisions, and determine the meaning or applica-*
7 *bility of the terms of any agency action. It shall (A) com-*
8 *pel agency action unlawfully withheld or unreasonably*
9 *delayed; and (B) hold unlawful and set aside agency action,*
10 *findings, and conclusions found to be (1) arbitrary, capri-*
11 *cious, an abuse of discretion, or otherwise not in accordance*
12 *with law; (2) contrary to constitutional right, power,*
13 *privilege, or immunity; (3) in excess of statutory jurisdic-*
14 *tion, authority, or limitations, or short of statutory right;*
15 *(4) without observance of procedure required by law; (5)*
16 *unsupported by substantial evidence in any case subject to*
17 *the requirements of sections 7 and 8 or otherwise reviewed*
18 *on the record of an agency hearing provided by statute;*
19 *or (6) unwarranted by the facts to the extent that the facts*
20 *are subject to trial de novo by the reviewing court. In*
21 *making the foregoing determinations the court shall review*
22 *the whole record or such portions thereof as may be cited*
23 *by any party, and due account shall be taken of the rule of*
24 *prejudicial error.*

EXAMINERS

1
2 *SEC. 11. Subject to the civil-service and other laws to*
3 *the extent not inconsistent with this Act, there shall be ap-*
4 *pointed by and for each agency as many qualified and*
5 *competent examiners as may be necessary for proceedings*
6 *pursuant to sections 7 and 8, who shall be assigned to cases*
7 *in rotation so far as practicable and shall perform no duties*
8 *inconsistent with their duties and responsibilities as examin-*
9 *ers. Examiners shall be removable by the agency in which*
10 *they are employed only for good cause established and de-*
11 *termined by the Civil Service Commission (hereinafter called*
12 *the Commission) after opportunity for hearing and upon the*
13 *record thereof. Examiners shall receive compensation pre-*
14 *scribed by the Commission independently of agency recom-*
15 *mendations or ratings and in accordance with the Classifi-*
16 *cation Act of 1923, as amended, except that the provisions*
17 *of paragraphs (2) and (3) of subsection (b) of section 7*
18 *of said Act, as amended, and the provisions of section 9 of*
19 *said Act, as amended, shall not be applicable. Agencies*
20 *occasionally or temporarily insufficiently staffed may utilize*
21 *examiners selected by the Commission from and with the*
22 *consent of other agencies. For the purposes of this section,*
23 *the Commission is authorized to make investigations, require*

1 reports by agencies, issue reports, including an annual re-
2 port to the Congress, promulgate rules, appoint such advisory
3 committees as may be deemed necessary, recommend legisla-
4 tion, subpoena witnesses or records, and pay witness fees as
5 established for the United States courts.

6 CONSTRUCTION AND EFFECT

7 SEC. 12. Nothing in this Act shall be held to diminish
8 the constitutional rights of any person or to limit or repeal
9 additional requirements imposed by statute or otherwise rec-
10 ognized by law. Except as otherwise required by law, all
11 requirements or privileges relating to evidence or procedure
12 shall apply equally to agencies and persons. If any provision
13 of this Act or the application thereof is held invalid, the
14 remainder of this Act or other applications of such provision
15 shall not be affected. Every agency is granted all authority
16 necessary to comply with the requirements of this Act
17 through the issuance of rules or otherwise. No subsequent
18 legislation shall be held to supersede or modify the provisions
19 of this Act except to the extent that such legislation shall do
20 so expressly. This Act shall take effect three months after
21 its approval except that sections 7 and 8 shall take effect six
22 months after such approval, the requirement of the selection
23 of examiners pursuant to section 11 shall not become effective

- 1 *until one year after such approval, and no procedural re-*
2 *quirement shall be mandatory as to any agency proceeding*
3 *initiated prior to the effective date of such requirement.*

Passed the Senate March 12 (legislative day, March 5), 1946.

Attest:

LESLIE L. BIFFLE,

Secretary.

79TH CONGRESS
2^D Session

S. 7

[Report No. 1980]

AN ACT

To improve the administration of justice by
prescribing fair administrative procedure.

MARCH 13, 1946

Referred to the Committee on the Judiciary

MAY 3, 1946

Reported with an amendment, committed to the Com-
mittee of the Whole House on the State of the
Union, and ordered to be printed

DIGEST OF
CONGRESSIONAL PROCEEDINGS
OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
Legislative Reports and Service Section
(For Department staff only)

Issued May 14, 1946
For actions of May 13, 1946
79th-2nd, No. 89

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HIGHLIGHTS: Both houses agreed to conference report on Patman housing bill, which authorizes price control and subsidies on new housing; Rep. Tarver objected to provision for forest roads; ready for President. House passed new selective-service extension bill but prohibited induction of fathers and provided for induction of only those between 20 and 30; rejected amendment to provide more specifically for farm-labor deferment. House Rules Committee cleared administrative-law bill. Senate committee reported Cooley farm-credit bill with language of Bankhead bill. Reps. Gross and Barden criticized Secretary Anderson's request for a 10% reduction in pig production.

HOUSE

1. HOUSING. Both Houses agreed to the conference report on H. R. 4761, the Patman housing bill, to be known as the "Veterans' Emergency Housing Act of 1946" (pp. 5012-5, 5032-6). This bill will now be sent to the President.

The bill creates the office of Housing Expediter and authorizes the President, with Senate confirmation, to appoint him within any existing agency or as an independent official. Authorizes the Expediter to formulate veterans' housing programs, to issue orders to other government agencies, to recommend legislation, and to cooperate with government and other groups; and transfers appropriate powers of OWMR to him. Authorizes him to place price ceilings on new housing. Authorizes him to allocate or establish priorities for materials needed for urban or rural housing and farm buildings. Liberalizes the mortgage-insurance provisions of the National Housing Act. Authorizes the Expediter to provide \$400,000,000 of housing subsidies to be financed by RFC, with an authorization for \$15,000,000 of this sum to be used, to the extent that other funds are not available, for construction of access roads to standing timber on lands owned by or under the jurisdiction of any Government agency. Provides for termination of this Act on Dec. 31, 1947 or a date chosen by Congress, whichever is earlier.

The House vote on the conference report was 298-71 (p. 5036).

Rep. Tarver, Ga., spoke against the provision for access roads to timber, stating that the subject of forest roads was considered in connection with the agricultural appropriation bill (pp. 5034-5).

2. SELECTIVE SERVICE. Passed, 280-84, with amendments S. J. Res. 159, to continue the Selective Training and Service Act (pp. 5036-60).

Rejected, 97-165, an amendment by Rep. Arends, Ill., to provide that, in classifying registrants, local boards shall base their findings only on whether

they are necessary to and regularly engaged in agriculture (p. 5058). Rep. Lanke, W. Dak., spoke in favor of deferment of farm labor (p. 5050).

Agreed, 213-154, to amendments by Rep. Sheridan, Pa., to prohibit induction of fathers and permit induction of only those persons between 20 and 30 (pp. 5055-9).

3. ADMINISTRATIVE LAW. The Rules Committee cleared S. 7, to improve the administration of justice by prescribing fair administrative procedure (p. 5024).
4. CLAIMS. Received from the President appropriation estimates for claims allowed by GAO (H. Docs. 578, 581, 582, and 583) and judgments rendered by district courts (H. Doc. 580). To Appropriations Committee. (p. 5061.)
5. RIVERS AND HARBORS Committee reported its omnibus bill (H. Rept. 2009) (p. 5061).
6. FLOOD CONTROL. Received the War Department's survey report on the Lehigh River, Pa. (H. Doc. 587). To Flood Control Committee. (p. 5061.)
7. FARM CREDIT. Rep. Poage, Tex., inserted a correction of the Houston (Tex.) Federal Land Bank's resolution to read: urging consideration of their resolution with reference to the suggestion that the lending power of the land bank commission be allowed to lapse" rather than "urging consideration of their resolution with reference to the suggestion that the Federal land banks be discontinued" as shown in the May 1 Congressional Record (p. 5021).
8. PIG PRODUCTION. Reps. Gross (Pa.) and Barden (N.C.) criticized Secretary Anderson's request for a 10% reduction in pig production (pp. 5022-3).
9. FEED SHORTAGE. Rep. Voorhis, Calif., spoke favoring increased poultry and other farm prices in view of the increased feed prices (p. 5021).
10. PRICE CONTROL. Rep. O'Toole, N.Y., urged that the Banking and Currency Committee determine "where the hundreds of thousands of dollars that are being expended to wipe out OPA are coming from" (p. 5020).
Rep. Smith, Ohio, criticized OPA's "illegal tactics," referring to an OPA "tear sheet" as a violation of the use of Federal funds for influencing Congressional conduct (p. 5022).
11. LEND-LEASE. H. Doc. 568 (see Digest 87) includes a letter from the Budget Bureau stating that \$1,897,000 is for this Department's administrative expenses and maintenance charges on plants and facilities acquired from such funds.

SENATE

12. FARM CREDIT. The Agriculture and Forestry Committee reported with amendment H.R. 5991 (the Coolidge bill) substituting the language of S. 1507 (S. Rept. 1329) (p. 4981). The Bankhead bill amends the Bankhead-Hones Farm Tenant Act so as to authorize tenancy loans to repair or improve family-type farms, enlarge undersized farms, refinance farms in certain circumstances, or make improvements in view of changing conditions; to make veterans eligible for such loans; to prohibit such loans unless the farm is of a size and type suitable for an efficient family-type unit; to limit the value to the county average; to permit at least \$100,000 to be used in each State; to permit veteran loans to be made from special appropriations without regard to State limitations; to provide a straight authorization for administrative expenses instead of the 5% limitation; to make previous and subsequent appropriations subject only to limitations of Title I; to permit grants to individuals for rehabilitation and to health cooperatives; to make veterans eligible for rehabilitation loans; to provide a straight and unlimited authorization for rehabilitation-loan appropriations; to make several changes in

These bureaucrats are still preaching the New Deal theories of scarcity. I am happy to say few farmers will follow their advice. Farmers want to have their farms produce to capacity, and this will give a generous supply of food for all. But this is not possible with bureaucratic interference, regulation, or advice. The farmers know best what and how to produce. Price will regulate the amount produced, and supply and demand will regulate price.

The SPEAKER. The time of the gentleman from Pennsylvania has expired.

PERMISSION TO ADDRESS THE HOUSE

Mr. MURDOCK. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

There was no objection.

BUREAU OF RECLAMATION

Mr. MURDOCK. Mr. Speaker, on May 10, after I had complimented the members individually of the Subcommittee on Appropriations, I criticized certain items in the Interior Department bill to some extent by saying:

There are certain cases where they have failed to carry out the plain mandates of the law, where they have withheld funds they have no right to withhold, and exercised judgments as to amounts which had previously been determined by higher authority.

Now, if I am correct in judging the work of the committee on those certain items, this statement ought to have some influence on the proper modification of this appropriation bill. If I am not correct, I ought to be corrected when we get to the reading of the bill for further amendment, for I propose to specify those certain items just referred to.

EXTENSION OF REMARKS

Mr. SPENCE asked and was given permission to extend his remarks in the RECORD and include a statement made by Mr. Bernard Baruch before the Rules Committee.

Mr. HEBERT asked and was given permission to extend his remarks in the RECORD and include a portion of an address made yesterday morning by the gentleman from Massachusetts [Mr. McCORMACK].

Mr. GAVIN asked and was given permission to extend his remarks in the RECORD and include an editorial.

Mr. ROBERTSON of North Dakota (at the request of Mr. LEMKE) was granted permission to extend his remarks in the RECORD and include a short editorial.

Mr. NORBLAD asked and was given permission to extend his remarks in the RECORD.

Mr. MUNDT (at the request of Mr. MICHENER) was granted permission to extend his remarks in the RECORD and include a letter.

PERMISSION TO ADDRESS THE HOUSE

Mr. BARDEN. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

FOOD PRODUCTION AND RATIONING

Mr. BARDEN. Mr. Speaker, until Friday of last week I had had a very high regard for the judgment and opinion of the Honorable Clinton Anderson, a former Member of this body and at present Secretary of Agriculture, but he was credited last Friday with issuing the statement that hog production in this country should be cut 10 percent in order to save grain. We are now in the midst of planting season where it would be a fine opportunity for the Secretary of Agriculture to advocate increasing corn production, rather than decreasing meat production when we are already short on meat in this country. It sounds very much like the man who burned his house down in order to get warm. Now this morning Mr. Chester Bowles, feeling that possibly his OPA set-up is in danger, attempts to frighten the country by telling the people he will probably call for food rationing again in August. Full well does Mr. Bowles know that this is going to start a rush of buying and hoarding, and when that is done he feels the road will be clear for him to again begin food rationing. This follows mighty closely on the heels of the statement given out by Secretary of Agriculture Anderson, and my suggestion to Mr. Anderson is that unless he wants to become the laughing stock of the agricultural people of this country and those who understand agriculture, he had better find him some associates and agricultural advisers more dependable than Mr. Chester Bowles and the Little Flower of UNRRA, LaGuardia.

PERMISSION TO ADDRESS THE HOUSE

Mr. ROGERS of Florida. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The SPEAKER. Is there objection to the request of the gentleman from Florida?

There was no objection.

TERMINAL LEAVE PAY FOR ENLISTED MEN

Mr. ROGERS of Florida. Mr. Speaker, I had hoped that my bill, H. R. 4051, would be taken up this morning. That is the bill granting terminal leave pay for enlisted men. However, the Military Affairs Committee reported the bill favorably; therefore, the petition to discharge becomes inoperative. It has been my intention to ask unanimous consent to consider that bill, but I think the Military Affairs Committee, and I am sure the Rules Committee, is going to give us cooperation and that this House can soon consider the bill. I hope that the Rules Committee will give a rule immediately. It is an important bill. It should have been passed long ago. It is long overdue. I am sure that when 218 Members of this House sign a petition, that means they want to consider the bill and such a discharge petition has been signed by 218 Members.

I appreciate the cooperation of both the Military Affairs Committee and the Rules Committee, and hope the bill will soon be passed.

Mr. NORBLAD. Mr. Speaker, I concur in the remarks of the gentleman from Florida [Mr. ROGERS]. It is an absurd situation where the enlisted man is not given the same rights as the officer in the matter of terminal leave. There is certainly no reason for it and it is one which we should correct. I urge the Rules Committee to grant a rule on this legislation and bring it on the floor as soon as possible.

The SPEAKER. The time of the gentleman from Florida has expired.

PERMISSION TO ADDRESS THE HOUSE

Mr. DIRKSEN. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

[Mr. DIRKSEN addressed the House. His remarks appear in the Appendix of today's RECORD.]

PERMISSION TO ADDRESS THE HOUSE

Mr. RANKIN. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

CHRISTIAN MINISTERS SHOULD BE ALLOWED TO USE THE RADIO

Mr. RANKIN. Mr. Speaker, I desire to reply briefly to the remarks of the gentleman from New York [Mr. KLEIN] and his unwarranted attack on the Committee on Un-American Activities.

He said we have invited Dr. Springer, a Baptist preacher, who is fighting communism, to come before the Committee on Un-American Activities. No resolution was passed inviting Dr. Springer; he came of his own accord. Christian preachers are pleading to be given the right to use the radio of this country, which they have a right to do. If the radio is going to be used to spread the doctrine of atheistic communism, then these Christian preachers have a right to reply.

Let me say to the gentleman from New York [Mr. KLEIN] that if Dr. Springer does come before the Committee on Un-American Activities I hereby now extend the gentleman from New York [Mr. KLEIN] an invitation to come and debate with him; and I will ask for the caucus room in order that all of you may come; for I can think of nothing you would enjoy more than hearing a debate such as this between a Jewish politician and a Baptist preacher.

PRIVILEGE OF THE HOUSE

Mr. HOFFMAN. Mr. Speaker, I raise a question of the privilege of the House.

The SPEAKER. The gentleman will present the resolution, if he has one.

Mr. HOFFMAN. I have a resolution, and wish to be heard on it.

The SPEAKER. The Clerk will report the resolution.

Mr. HOFFMAN. May I be heard on it?

The SPEAKER. After the resolution is reported. The Chair always appreciates Members conferring with the Chair beforehand when they intend to raise such questions.

CALL OF THE HOUSE

Mr. RANKIN. Mr. Speaker, I make a point of order that a quorum is not present.

The SPEAKER. Evidently no quorum is present.

Mr. McCORMACK. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The Clerk called the roll, and the following Members failed to answer to their names:

[Roll No. 114]

Bailey	Gearhart	Patrick
Baldwin, Md.	Grant, Ind.	Patterson
Baldwin, N. Y.	Hall,	Peterson, Ga.
Bell	Leonard W.	Reece, Tenn.
Bender	Hand	Reed, Ill.
Bennet, N. Y.	Hare	Robertson,
Bonner	Hart	N. Dak.
Boren	Hartley	Rockwell
Boykin	Hinshaw	Rodgers, Pa.
Buck	Horan	Roe, N. Y.
Buckley	Jarman	Rooney
Butler	Johnson, Ind.	Russell
Cannon, Fla.	Keogh	Sheppard
Clark	Kirwan	Stewart
Cochran	Kopplemann	Sumner, Ill.
Corbett	LaFollette	Sumners, Tex.
Curley	Lanham	Taylor
Daughton, Va.	Lea	Torrens
Dawson	Lyle	Towe
De Lacy	Mansfield, Tex.	Wasielewski
Drewry	Marrow	White
Eaton	Monroney	Wolcott
Elsaesser	Morgan	Wolfenden, Pa.
Engle, Calif.	Mundt	Zimmerman
Flood	Murphy	
Folger	Norton	

The SPEAKER. On this roll call, 356 Members have answered to their names; a quorum is present.

By unanimous consent, further proceedings under the call were dispensed with.

FAIR ADMINISTRATIVE PROCEDURE

Mr. SABATH, from the Committee on Rules, submitted the following privileged resolution (H. Res. 615) on the bill (S. 7) to improve the administration of justice by prescribing fair administrative procedure, for printing in the RECORD:

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the act (S. 7) to improve the administration of justice by prescribing fair administrative procedure. That after general debate, which shall be confined to the bill and continue not to exceed 2 hours, to be equally divided and controlled by the chairman and the ranking minority member of the Committee on the Judiciary, the bill shall be read for amendment under the 5-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

PRIVILEGE OF THE HOUSE

The SPEAKER. The gentleman from Michigan [Mr. HOFFMAN] has offered a

resolution (H. Res. 616), which the Clerk will report.

The Clerk read, as follows:

Whereas on Friday, the 10th day of May, under permission granted the gentleman from Michigan [Mr. Hook] caused to be inserted in the CONGRESSIONAL RECORD, pages A2755-A2756, an address delivered over the radio by August Scholle, president of the Michigan CIO Council; and

Whereas said address as appears from the printing in the RECORD said address was not only a plea for a continuation of the OPA but an attack upon the Congress and individual Members of Congress, reflecting upon the integrity of the Congress and individual Members of Congress named therein; and

Whereas said address as printed in the CONGRESSIONAL RECORD contained, among others, the following statements:

"Ladies and gentlemen, I have called you ladies and gentlemen. Perhaps that is the wrong way to begin a talk on what has just happened to price control in the House of Representatives. When men and women have just been slugged over the head and thrown down a flight of stairs they don't feel much like ladies and gentlemen. They feel like picking themselves up and looking around for the guy who did it.

"Well, you, my friends, have just been slugged over the head and thrown down a flight of stairs. Your bodies may not be bruised, you may not feel light in the head or in the stomach. But you, the great American suckers, have just been given the beating of your lives by a handful of Congressmen in the House of Representatives. * * *

"Are you going to play the role of innocent bystander while prices go through the roof and a howling pack of profiteers and pressure boys steal the shirt off your back? Are you going to mumble behind the morning newspaper while a few selfish profit-hungry men pick your pockets and lead this country down the road to inflation and another depression? * * *

"I say that we have been beaten up and taken for a ride. I say we have been robbed. * * *

"These powerful and cynical men have their servants in the Congress of the United States. * * *

"But the reality, as it is practiced by congressional servants of powerful pressure groups—the reality as it was practiced the other day in the House of Representatives—this reality is an insult to the high principles of democracy to which we pay lip service and in whose name we send men out to die.

"The House of Representatives murdered price control the other day, just as Congress a few weeks before had scuttled the full employment bill. * * *

"In Michigan Congressman WOLCOTT and Congressman CRAWFORD were among those who led the fight to wreck price control. The clearest test of congressional sympathies for and against the basic principles of price control came when Representative Wolcott's cost-plus amendment was put to a vote. Despite sharp warning of its crippling effect on OPA, the following Michigan Congressmen voted against effective price control: BLACKNEY, BRADLEY, CRAWFORD, DONDERO, ENGEL, HOFFMAN, JONKMAN, and MICHENER.

"You and I were slugged over the head and thrown down a flight of stairs when the House tossed OPA to the wolves of profit.

"We're tired of being pushed around by supply and demand, tired of taking it on the chin for the big boys and their spaniels in Congress.

* * *

"Write to Senator FERGUSON and Senator VANDENBERG. Tell them to talk to Senator TAFT. Tell them you mean business."

Whereas the remarks of the president of the CIO, as printed in the CONGRESSIONAL RECORD, reflect upon and challenge the integrity of the Congress, and the excerpts just quoted reflect upon the Congress and upon

the individual Members of Congress therein named and tend to impair the usefulness of the Members of the Congress so named and to destroy the confidence of the people in the Congress as a whole and in particular the Representatives so named: Be it

Resolved, That the remarks of August Scholle, president of the CIO Council as printed on pages A2755-A2756 of the CONGRESSIONAL RECORD of May 10, and the same be and the same hereby are stricken from the RECORD.

Mr. STARKEY. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. STARKEY. Will the resolution just read be printed in the RECORD?

The SPEAKER. It will.

Mr. HOFFMAN. Mr. Speaker, it is bad enough to have the members of the CIO, the PAC and Communists making false statements reflecting upon the good faith, the common sense, the patriotism of the Congress and the individual Members of Congress. Under our system of government no doubt Mr. Scholle, as president of the CIO, had the right to make the speech he made. But it is a violation of the rules of the House for a Member of the House to cause a speech of that character to be placed in the RECORD from which if permitted to remain it may be used by anyone who sees fit to have it printed and have it franked out at the taxpayers' expense, if he can secure the consent of any one of 435 Members of Congress.

You will note that the speech itself seems directed primarily at the members of the National Association of Manufacturers. Without proof it charges them with all sorts of unworthy, unpatriotic, and disloyal motives, and that perhaps is within the doctrine of free speech. But the state president of the UAW-CIO in Michigan goes on the radio and makes false charges—the words have been read by the Clerk—that the men and women who heard him have been slugged over the head and thrown down a flight of stairs. He further charges that in the Congress the people's representatives are the ones who did the slugging. He not only charges the Congress as a whole with slugging the people over the head and throwing them down the stairs, but he goes on and makes the same false charge against individual Members of Congress whom he names. The gentleman (Mr. Scholle) acting in line with the policy of PAC-CIO and the Communists makes the false charge that every Republican from Michigan acted as the agent, as the stooge, as the dog—and he names a special breed of dogs, the "spaniel"—of those he charges with slugging the people, the servants of those who entertain unpatriotic motives. I am sorry the gentleman from Michigan [Mr. Hook] saw fit to put into the CONGRESSIONAL RECORD charges reflecting upon the integrity, the sincerity, the patriotism of his colleagues in the House.

Not only do these remarks, Mr. Speaker, violate the rules insofar as the House and the Members of the House are concerned, but they violate the rules of the House in that they refer to individual Members of the Senate by name.

Because of the falsity and the seriousness of the charges made by the UAW-CIO official this resolution was offered

CONSIDERATION OF S. 7

MAY 13, 1946.— Referred to the House Calendar and ordered to be printed

Mr. SABATH, from the Committee on Rules, submitted the
following

REPORT

[To accompany H. Res. 615]

The Committee on Rules, having had under consideration House Resolution 615, reports the same to the House with the recommendation that the resolution do pass.



ALPHABETICALLY

History of the University of Chicago

History of the University of Chicago

History of the University of Chicago

History of the University of Chicago

History of the University of Chicago
History of the University of Chicago

House Calendar No. 365

79TH CONGRESS
2^D SESSION

H. RES. 615

[Report No. 2008]

IN THE HOUSE OF REPRESENTATIVES

MAY 13, 1946

Mr. SABATH, from the Committee on Rules, reported the following resolution ;
which was referred to the House Calendar and ordered to be printed

RESOLUTION

1 *Resolved*, That upon the adoption of this resolution it
2 shall be in order to move that the House resolve itself
3 into the Committee of the Whole House on the State of
4 the Union for the consideration of the Act (S. 7) to improve
5 the administration of justice by prescribing fair administrative
6 procedure. That after general debate, which shall be con-
7 fined to the Act and continue not to exceed two hours, to
8 be equally divided and controlled by the chairman and the
9 ranking minority member of the Committee on the Judiciary,
10 the Act shall be read for amendment under the five-minute
11 rule. At the conclusion of the consideration of the Act
12 for amendment, the Committee shall rise and report the

1 Act to the House with such amendments as may have been
2 adopted and the previous question shall be considered as
3 ordered on the Act and amendments thereto to final pas-
4 sage without intervening motion except one motion to
5 recommit.

House Calendar No. 365

79TH CONGRESS
2^D SESSION

H. RES. 615

[Report No. 2008]

RESOLUTION

Providing for the consideration of S. 7, an
Act to improve the administration of jus-
tice by prescribing fair administrative pro-
cedure.

By Mr. SABATH

MAY 13, 1946

Referred to the House Calendar and ordered to be
printed

DIGEST OF

CONGRESSIONAL PROCEEDINGS

OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
Legislative Reports and Service Section
(For Department staff only)

Issued May 27, 1946
For actions of May 24 & 25, 1946
79th-2nd, Nos. 98 & 99

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HIGHLIGHTS: Senate agreed to conference report on school-lunch bill; ready for President. Sen. Langer criticized OPA regulations as cause of milk shortage in Fargo, N. Dak. Sen. Bridges criticized Government's failure to act in New England feed shortage situation. Sen. Bankhead and Rep. Flannagan introduced bills to provide for further research into basic laws and principles relating to agriculture. Sen. O'Mahoney introduced bill to amend the Sugar Act. House passed administrative procedure bill. House passed strategic materials purchase and stockpiling bill. Rep. Murray introduced bill to limit slaughtering quotas. Senate confirmed nomination of Wyatt to be Housing Expediter. Senate committee recommended removal of all milk and milk products price controls. President's joint-session message on labor situation. President approved Federal pay bill.

SENATE - May 24

- SCHOOL-LUNCH PROGRAM.** Agreed to the conference report on this bill, H.R. 3370, without discussion and without record vote (pp. 5706-8). This bill will now be sent to the President. For provisions of conference report see Digest 94,.
- LABOR DISPUTES.** Continued debate on H.R. 4908, to provide additional facilities for the mediation of labor disputes (pp. 5672-706, 5708-41).
- MILK SHORTAGE.** Sen. Langer, N.Dak., criticized OPA milk regulations in Fargo and Moorhead, N.Dak., as the cause of a milk shortage there (pp. 5692-3).
- FEED SHORTAGE.** Sen. Bridges, N.H., inserted his statement criticizing the Government's failure to act in the New England feed shortage which, he says, "is a dire emergency" (p. 5668).
- RESEARCH.** The Military Affairs Committee submitted the minority-views report on S. 1850, to promote the progress of science and the useful arts, to secure the national defense, and to advance the national health and welfare (S.Rept. 1136, Pt. 2) (p. 5668).
- PRICE CONTROL.** Received the 16th quarterly report of the OPA, for the period ending Dec. 31, 1945 (p. 5668).
Sen. Vandenberg, Mich., submitted a Mich. citizens' petition urging the continuation of price control (p. 5668).

7. PUBLIC LANDS. The Public Lands and Survey's Committee reported without amendment H.R. 5271, to amend the act to allow credit in connection with certain homestead entries for military or naval service rendered during War II (S.Rept. 1390) (p. 5668).

8. NATIONAL RESOURCES. Sen. Thomas, Utah, submitted an amendment which he intends to propose to S. Res. 245, to increase the limit of expenditures for the investigation of the better mobilization of the natural resources of the U.S. (pp. 5669-72).

SENATE - May 25

9. PRESIDENT'S MESSAGE; LABOR DISPUTES. Both Houses in joint session received the President's message and recommendations for legislation relative to the labor disputes (pp. 5861-2, 5817).

Sen. Barkley, Ky., and Rep. Rankin, Miss., inserted the President's radio address on the labor situation in which he referred to its effect on the food supply of the country (pp. 5793, 5850-1).

10. PRICE CONTROLS; MILK AND MILK PRODUCTS. The Agriculture and Forestry Committee submitted an interim report on wartime price controls and subsidies affecting (milk and milk products, recommending that all subsidies and price controls on such commodities be removed at once (pp. 5499-801).

11. NOMINATION; HOUSING. Confirmed the nomination of Wilson W. Wyatt to be Housing Expediter (pp. 5847, 5848).

12. LABOR DISPUTES. Passed, 49-29, with amendments H.R. 4908, to provide additional facilities for the mediation of labor disputes (pp. 5794-9, 5801-17, 5821, 5827-47).

The Interstate Commerce Committee reported with amendments H.R. 6578, to provide for prompt settlement, on a temporary basis during the present emergency of industrial disputes vitally affecting the national economy in the transition from war to peace (S. Rept. number not given) (pp. 5830, 5847). This bill contains the recommendations of the President with regard to the labor situation.

13. RECESSED until Mon., May 27 (p. 5847-8).

HOUSE - May 24

14. ADMINISTRATIVE PROCEDURE. Passed without amendment S. 7, to improve the administration of justice by prescribing fair administrative procedure (pp. 5750-72).

Rejected an amendment by Rep. Kefauver, Tenn., to permit any lawyer who has been admitted to the bar of the U.S. Supreme Court or the highest court of the State of his residence to practice before any Government agency (pp. 5772-3). For provisions of the bill see Digest 43).

15. STRATEGIC MATERIALS. Passed with amendment S. 752, to provide for the acquisition of stocks of strategic and critical materials for national defense (pp. 5774-89).

16. DAIRY INDUSTRY. Received a Wis. Cheese Makers' Assn. petition setting forth their views on OPA policies (p. 5791).

17. LEGISLATIVE PROGRAM. Majority Leader McCormack announced the program for this week as follows: Mon., District Day; Tues., Memorial day services; Wed., third deficiency bill; and Fri., H.R. 5674, relating to protection work in connection

istration in power, seem to be synonymous.

Mr. Speaker, if further legislation is needed to meet the present situation I, for one, am ready to vote for that legislation.

PERMISSION TO ADDRESS THE HOUSE

Mr. MILLER of Nebraska. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from Nebraska?

There was no objection.

THE STRIKE CRISIS

Mr. MILLER of Nebraska. Mr. Speaker, there comes a time in the history of a people when they reach the boiling point. It is easy to review past events of history. In my humble opinion, World War II was not necessarily caused by Pearl Harbor, but by the many incidents that occurred previous to Pearl Harbor. Pearl Harbor was the boiling point. The people could stand no more.

The present strike wave is again causing the people of this Nation to reach the boiling point. The people are demanding that labor legislation be enacted now. Legislation that will protect the public from the tremendous damage that is now being done to them by the railway and coal strikes.

I would suggest to the leadership in this House, that they act immediately on the bill which may come, shortly, from the Senate. If the bill from the Senate, is in proper form, it should be accepted without benefit of a conference committee. The conference committee might pull out all of the teeth.

Mr. Speaker, legislation is needed which will be in the interest of the public. It does seem that when the health, welfare and public safety are involved and when the Government takes over a union and a strike, then that strike should be ended. If it continues it is a strike against the Government, and that means the people of the United States.

It can well be said that the chickens are coming home to roost for this administration. This administration, for many years, has coddled labor and urged legislation which put labor in a favorable position. They helped enact labor legislation which did not protect the public. The people of the United States have been without proper leadership from this administration. The time has arrived to take prompt and determined action.

The SPEAKER. The time of the gentleman from Nebraska has expired.

EXTENSION OF REMARKS

Mr. REES of Kansas asked and was given permission to extend his remarks in the RECORD and include an article and two letters.

PERMISSION TO ADDRESS THE HOUSE

Mr. REES of Kansas. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The SPEAKER. Is there objection to the request of the gentleman from Kansas?

There was no objection.

VETERANS ARE ENTITLED TO MODERATE-COST HOUSING

Mr. REES of Kansas. Mr. Speaker, a great deal has been said on this floor and through the press with respect to priorities for veterans on building materials and supplies for constructing homes. There are a half dozen Government agencies dealing with veterans' housing problems. It is understood the Government policy is to see that priority is given to construction of moderately priced homes for veterans, and then to others who are in dire need of them.

Mr. Speaker, there are hundreds of high-priced homes being built in the larger cities in this country, including Washington. I visited a project where 125 homes are now under construction. The lowest price on any one of these houses is \$25,400. They run from that figure to beyond \$30,000. Those in charge of the project advise they are being supplied with all necessary building materials together with plumbing and other fixtures to complete these homes. The only requirement involved is that they first offer these homes to veterans during a period of 30 days. After that, anyone may buy who has the money. Not many veterans will buy these high-priced houses. This one project alone will total more than four and a half million dollars. The material and equipment in these homes would go a long way in building many moderate-priced homes.

In my district lumber and supply dealers are able to secure only a limited supply of material and equipment to build a few moderately priced homes. If the material used in expensive homes could be used for moderately priced homes, it would help a great deal in solving the housing problem for servicemen and others.

If a veteran wants to build a home in my part of the country he is required to go through reams of red tape in order to secure permission to do it. Then he meets with the further difficulty of lack of materials. I cannot understand how, or why, priorities to big contractors to build expensive homes.

If administrative officials are really anxious to provide moderate-cost housing for veterans, the situation to which I called attention cannot be justified.

The SPEAKER. The time of the gentleman from Kansas has expired.

PERMISSION TO ADDRESS THE HOUSE

Mr. SMITH of Ohio. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The SPEAKER. Is there objection to the request of the gentleman from Ohio?

There was no objection.

CURE FOR THE STRIKE EVIL

Mr. SMITH of Ohio. Mr. Speaker, the question has been asked as to what kind of law ought to be passed to meet the perilous strike situation. Enact a law guaranteeing to every person in this country the right to work wherever he pleases, at whatever wage he can voluntarily agree upon with any employer, without having to pay tribute to anyone. If we do that we will be doing no more than reassert one of the fundamental

principles of the Constitution of the United States. This would be helpful to wage earners as well as all others. It is imperative that we do this to preserve national order and stability.

PERMISSION TO ADDRESS THE HOUSE

Mr. RANDOLPH. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The SPEAKER. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

FEASIBILITY OF AMENDING PRESENT LABOR LAWS

Mr. RANDOLPH. Mr. Speaker, the gentleman from Indiana [Mr. LANDIS] has already called the attention of the membership to the action taken by the House Labor Committee earlier today in reference to the appointment of a seven-man subcommittee to investigate the feasibility and the practicability of amending present laws dealing with labor and management. The possibility of offering remedial legislation to deal with the economic troubles caused by strikes and other reasons is a proper subject for careful review.

As the acting chairman of the Committee on Labor, I am attempting to exercise my duty during a grave crisis in the history of our Nation. The Labor Committee unanimously empowered me to appoint a group to make a searching inquiry. I selected the following: Mr. KELLEY of Pennsylvania; Mr. FISHER, of Texas; Mr. Hook, of Michigan; Mr. RESA, of Illinois; Mr. LANDIS, of Indiana; Mr. McCONNELL, of Pennsylvania; and Mr. BUCK, of New York.

The SPEAKER. The time of the gentleman from West Virginia has expired.

PERMISSION TO ADDRESS THE HOUSE

Mr. OUTLAND. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

CURE FOR THE PRESENT LABOR STRIFE

Mr. OUTLAND. Mr. Speaker, we hear a great deal these days about labor strife and about the fact that there is no action being taken about it. A certain amount of blame is being placed on the President of the United States; such is most unfair.

Mr. Speaker, these difficulties are not going to be solved by passing hasty legislation such as the Smith-Connally bill which after being passed over President Roosevelt's veto was repudiated by the Republican candidate for the Presidency in the following campaign. We are going to solve labor strife only as we pass comprehensive, thoughtful measures, such as full employment legislation, minimum wage laws, adequate social security and other things which in the long run will bring a greater degree of decency, of fairness and of democratic living to the American people as a whole. If there would be less calling of names and more cooperation on the President's program there would be less industrial strife. If we had more statesmanship and less

politics we would achieve more lasting results.

The SPEAKER. The time of the gentleman from California has expired.

PERMISSION TO ADDRESS THE HOUSE

Mr. SMITH of Virginia. Mr. Speaker, I ask unanimous consent to address the House for 1 minute, and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from Virginia?

There was no objection.

COMMITTEE ON LABOR

Mr. SMITH of Virginia. Mr. Speaker I want to congratulate the gentleman from West Virginia on finally getting the Committee on Labor in the House to respond to the sentiment of the country in trying to get some amendments to the National Labor Relations Act. I recall an old spiritual which I believe goes like this:

As long as the light holds out to burn,
The vilest sinner may return.

But I do want to also call attention of the committee to the elaborate investigation of the National Labor Relations Act and of that Board which took place 5 years ago resulting in a report from the select committee of which I was chairman, recommending a complete revision of the National Labor Relations Act, and which revision was passed by this House over the opposition of the Committee on Labor by a vote of 2 to 1. I think that they can begin their education on this subject by a careful scrutiny of the report of that select committee, and the bill which the House passed pursuant thereto.

PERMISSION TO ADDRESS THE HOUSE

Mr. KEEFE. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The SPEAKER. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

THE PRESENT CRISIS

Mr. KEEFE. Mr. Speaker, in these times of great crises it is remarkable to hear the speeches that have been made here this morning. Certainly the chickens have come home to roost right on the doorstep of the administration that has toyed with this problem for these many years. Now we find that at long last, the Committee on Labor is about to conduct an investigation of what they may possibly do to amend the National Labor Relations Act.

It reminds me of the veteran who recently applied for a passport to return to Europe, and when asked why he wanted to return after having served 3½ years in combat, he said, "I have found from my experience over there that chaos in Europe is better organized than it is in America."

EXTENSION OF REMARKS

Mr. HAYS asked and was given permission to extend his remarks in the Record.

Mr. ABERNETHY asked and was given permission to revise and extend the remarks he made earlier today.

Mrs. LUCE (at the request of Mr. MARTIN of Massachusetts) was given permission to extend her remarks in the Record in three instances and include some editorials.

Mr. FORAND (at the request of Mr. KOPPLEMANN) was given permission to extend his remarks in the Record in two instances and include in one a resolution.

NATIONAL CEMETERIES

Mr. SABATH, from the Committee on Rules, reported the following privileged resolution (H. Res. 639, Rept. No. 2129), which was referred to the House Calendar and ordered to be printed:

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the act (S. 524) to provide for one national cemetery in every State and Territory, and such other national cemeteries in the States, Territories, and possessions as may be needed for the burial of war veterans. That after general debate, which shall be confined to the act and to continue not to exceed 1 hour to be equally divided and controlled by the chairman and the ranking minority member of the Committee on Military Affairs, the act shall be read for amendment under the 5-minute rule. At the conclusion of the reading of the act for amendment, the Committee shall rise and report the same back to the House with such amendments as may have been adopted and the previous question shall be considered as ordered on the act and amendments thereto to final passage without intervening motion except one motion to recommit.

ADMINISTRATIVE PROCEDURE ACT

Mr. SABATH. Mr. Speaker, I call up House Resolution 615 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the act (S. 7) to improve the administration of justice by prescribing fair administrative procedure. That after general debate, which shall be confined to the act and continue not to exceed 2 hours, to be equally divided and controlled by the chairman and the ranking minority member of the Committee on the Judiciary, the act shall be read for amendment under the 5-minute rule. At the conclusion of the consideration of the act for amendment, the Committee shall rise and report the act to the House with such amendments as may have been adopted and the previous question shall be considered as ordered on the act and amendments thereto to final passage without intervening motion except one motion to recommit.

TO IMPROVE ADMINISTRATIVE PROCEDURE

Mr. SABATH. Mr. Speaker, later on I shall yield 30 minutes to the gentleman from Michigan [Mr. MICHENER].

Mr. Speaker, House Resolution 615 makes in order the consideration of Senate 7 as amended by the Committee on the Judiciary. The bill aims to improve the administration of justice by prescribing fair administrative procedure. The rule is an open rule, and provides for 2 hours of general debate.

Mr. Speaker, I hope this is only the beginning of legislation to improve the administration of justice and that it will

bring about real justice to all those who are obliged to face our courts.

NOT THIS KIND OF JUSTICE

Speaking about justice, I am reminded of a story. A certain corporation lawyer, having been called to defend an action way out West, after surveying the situation engaged every lawyer in that county that he thought could be of service one way or the other. After the case was concluded the corporation lawyer wired home, "Pleased to report case has been concluded and justice prevailed." In about half an hour he received a wire, "In view of that result, give notice of appeal for a new trial." I hope that is not the kind of justice we are going to have in some of these courts as a result of the passage of this bill.

This bill, Mr. Speaker, is the fruit of 10 years of careful inquiry and consideration by the Committees on the Judiciary in both Houses of Congress, by the President's Committee on Administrative Management, by the Attorney General's Committee on Administrative Procedure, and by many public, quasi-public, and private groups, committees, and organizations representing the bar, business, and industry. Exhaustive hearings have been held, scores of witnesses heard, dozens of conferences and consultations had. Seldom, indeed, has any legislation reached the floor with so much careful thought behind it. High recognition is due the members and the chairmen of the respective committees, and in particular to the gentleman from Pennsylvania [Mr. WALTER].

PRESENT BILL MEETS OBJECTIONS

The object of the bill is, as I have stated, to improve the administration of rules and regulations made by the agencies under grants of power from Congress, and to establish uniformity of practice so that any citizen may have his day in court with a minimum of delay and expense.

Ever since I have been in the House, and for many years before that, there has been complaint from lawyers, from businessmen, from industry, and from plain citizens that they were lost in the maze of administrative agencies and regulations. There has been no argument as to the need for systematization and clarification; the only differences have been as to the methods to be followed, on how to achieve the desired end with the greatest equity to the public and the least disturbance to the complex growth of administrative functions. An earlier bill, the Logan-Walter bill, was vetoed by President Roosevelt because it was felt to be inadequate to the problems, and that it would have the effect of crippling administrative agencies and the courts.

PUBLICITY VALUABLE CONTRIBUTION

There is general agreement that the present bill has not only eliminated the objections previously made but has achieved a substantial contribution in its publicity requirements; and that it has arrived at an equitable and helpful differentiation of the legislative or rule-making powers and the quasi-judicial powers frequently lodged in the same agency.

What the bill does, in substance, may be summarized under four headings:

First. It provides that agencies must issue as rules certain specified information as to their organization and procedure, and also make available other materials of administrative law.

Second. It states the essentials of the several forms of administrative proceedings and the general limitations on administrative powers.

Third. It provides in more detail the requirements for administrative hearings and decisions in cases in which statutes require such hearings.

Fourth. It sets forth a simplified statement of judicial review designed to afford a remedy for every legal wrong.

COMMENDATION FOR INVESTIGATIVE SECTIONS

I should like to bespeak special commendation for the discussion of section 6 (B), dealing with administrative investigation, found on page 23 of the report of the House Committee on the Judiciary. Investigations, the committee says, must not be "fishing expeditions," and may not disturb or disrupt personal privacy, or unreasonably interfere with private occupation or enterprise. They should be so conducted as to interfere in the least degree compatible with adequate law enforcement.

I am told that this is only the beginning in trying to adjust many different viewpoints held by various judges in the different districts. I am hopeful that the Committee on the Judiciary within a short time will bring in a much broader bill that will guarantee real justice to all the people, and assure that justice will be done in all proceedings, that whether a man be poor or rich, equal justice will be meted out.

I do not wish to detain the House further, as this is a bill I know the Members are desirous of considering. I do not believe there will be much opposition to the rule or to the bill.

I now yield 30 minutes to the gentleman from Michigan [Mr. MICHENER].

(Mr. SABATH asked and was given permission to revise and extend his remarks.)

Mr. MICHENER. Mr. Speaker, this is an important bill. In my experience in Congress, no legislation has had more careful and more painstaking consideration on the part of the legislative branch of the Government, the agencies of the Government, the committees of Congress, the American Bar Association, business and other groups primarily affected. For more than 10 years, committees have been working. During all that time efforts have been made to reach a common ground where we could all agree and enact needed legislation. The measure we are about to consider, in my opinion, will not receive a negative vote in the Congress today. That is something—that is an accomplishment. It is the fruition of careful study, tolerance, nonpartisanship, and genuine cooperation. The only aim and purpose of this bill is to see that the rank and file of American people receive the justice which our system of jurisprudence attempts to guarantee to them. I am not going to go into the technicalities of the bill. It will be explained by mem-

bers of the subcommittee of the Judiciary Committee, who have lived with this matter for 10 long years. I am sure they will be able to answer all questions. For my part, I doubt if many questions will be asked. When the first proposal was suggested to the Congress, I was opposed to it. One school of thought was entirely of one mind. Another school of thought was entirely of another mind. Possibly each school went too far in advocating just what it thought should be done. But after calm study, deliberation, and consideration, as well as tolerance, we are here today with something that the Committee on the Judiciary stands behind unanimously. It is not perfect. It is a pioneer effort. It can be amplified as circumstances warrant.

Mr. JOHNSON of California. Mr. Speaker, will the gentleman yield?

Mr. MICHENER. I yield.

Mr. JOHNSON of California. In the State of California, the courts and the bar have spent about 6 years studying this same problem. They finally passed a bill almost identical to the bill you are offering here today. It has received universal approbation both of the bench and bar as well as litigants.

Mr. MICHENER. I am sure after this bill becomes law, which I feel sure it will, the same condition will exist in the Federal Government.

Mr. PITTENGER. Mr. Speaker, will the gentleman yield for a comment since my distinguished colleague does not want to delay matters?

Mr. MICHENER. I yield to the gentleman.

Mr. PITTENGER. As I understand it, this is a successor to the old original Walter-Logan bill. Our distinguished colleague from Pennsylvania [Mr. WALTER] and the late Senator Logan rendered a great public service when they introduced that legislation. It should have been passed years and years ago because it is in harmony with American ideas and American traditions of the right to go into court when you feel you have been wronged. I hope we pass it, and pass it soon.

Mr. MICHENER. The Walter-Logan bill passed the Congress, but was vetoed by the President because, he said, the subject needed more study. That study has been made. This type of bill cannot be written on the floor. It is too technical. Neither can it be adequately explained in a short speech in this debate.

Mr. SCRIVNER. Mr. Speaker, will the gentleman yield?

Mr. MICHENER. I yield.

Mr. SCRIVNER. I wish to take this opportunity to commend the committee and the subcommittee, not only on the measure itself, but on the full and complete and explanatory report which they have prepared. This measure is a step in the right direction toward regulating the regulators. I trust the bill will receive a unanimous vote.

Mr. MICHENER. Mr. Speaker, reference has been made to the committee report. This report contains 56 pages, and it is complete. If it were not so long, I should include it in the Record, but I want the Record to show reference to

the report, so that anybody in the future who wants to know what this bill means and why it is here will know where to go to get concise information. It is House Report No. 1980, Seventy-ninth Congress, second session.

Mr. Speaker, Dean E. Blythe Stason, of the law school of the University of Michigan, served on the attorney general's committee studying administrative procedure. He has also served on bar association committees making like investigation. Indeed, he is an expert on administrative procedure legislation and I have a great respect for his judgment in these matters. After reading this bill, Dean Stason wrote to me approving the bill in its present form. He said:

This measure has now been given very careful attention, not only by the Senate committee, but also by the appropriate committees of the American Bar Association, where it has been debated, revised, and re-revised, throughout the last half dozen years. I have studied the act very carefully indeed and in fact have participated in certain of the earlier drafts. I am convinced that the measure is now in first-class condition and is as good a measure as can be expected at this time in so highly controversial a field as that of administrative law. I hope that the bill becomes a law at an early date.

I understand that the other members of the former attorney general's committee agree with Dean Stason.

Mr. Speaker, I have no requests for time on this side.

Mr. SABATH. Mr. Speaker, I yield 5 minutes to the gentleman from Virginia [Mr. SMITH].

Mr. SMITH of Virginia. Mr. Speaker, I am delighted to see this bill come to the floor in the form in which it is probably going to receive the approval of both the House and the Senate. This is a subject that should have been dealt with many years ago. It is more important now than ever before. It is becoming more important every day. There has grown up a great system of administrative procedure that has grown up without any regulation by Congress to the point where the average citizen who has a matter before any bureau in Washington must go through a maze of rules and regulations unknown to him and often unknown to the agency which deals with them.

I have given this subject much consideration. In fact, I introduced a bill which went farther than the present bill. I had hoped that certain features of it would go farther. I had hoped that we would have a more complete separation of the judicial and executive functions in this bill. I do think that the committee has gone a long way, and perhaps they are wise in not going any farther than they have gone.

I want to call the attention of the House particularly to the report on this bill, as has the distinguished gentleman from Michigan [Mr. MICHENER]. It is one of the finest reports I ever read. It is clear, full, and complete. There are many details in setting up a code of administrative procedure. It is a great undertaking. I look upon this bill as merely the beginning of setting forth a code that will regulate and coordinate

the procedure in all of these procedures before executive agencies.

This bill has this added advantage: Although one bill was vetoed by the President, although there has been much controversy over this whole subject, we have at last reached the point where the Committee on the Judiciary in the House of Representatives has agreed upon a bill, and I understand they have consulted with the Judiciary Committee of the Senate, and this bill has been submitted to them in its amended form and it is agreeable to the Senate. On the last page of the report you will find a complete endorsement by the Attorney General. So the Senate Judiciary Committee, the House Judiciary Committee, and the Attorney General all being in accord, I merely took the floor to express the hope that, notwithstanding some of us may have wanted some addition of details to this bill, we will all agree on this bill as it is written, and we will not place any amendments on the bill which may jeopardize its ultimate passage at this session of the Congress. It is a most important thing to do. I do hope the House will pass this bill as it is, so that we may finally make a fine start, as we are in this bill, upon legislation that has been so long needed and so long neglected.

The SPEAKER. The time of the gentleman from Virginia has expired.

Mr. SABATH. Mr. Speaker, I yield 5 minutes to the gentleman from Missouri [Mr. SLAUGHTER].

Mr. SLAUGHTER. Mr. Speaker, I ask unanimous consent to speak out of order and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. SLAUGHTER. Mr. Speaker, I cannot go along with the violent attacks that have been made upon the administration this morning. In the first place, I think many of them are unjust. Second, and more important, the vituperative name-calling is not going to pull this country out of the industrial paralysis which grips it today. Whatever mistakes the administration may have made are water over the dam. The fact remains that action is needed and needed now, and I know of no place from which it can come but from the Congress of the United States.

Can something be done? I think it can. I have just introduced a bill which, in my judgment, will end the railroad strike within a matter of hours, if and when it becomes law. I can say this, for I have no pride of authorship. It largely follows the amendment presented by Senator SCOTT LUCAS, of Illinois, in the bill which is now pending in the Senate.

This bill reaffirms and restates a declaration of policy so self-evident that there can be no dispute as to its wording. It defines and states as a national policy that strikes in those industries which affect the health and safety of our people cannot be tolerated. It provides and reaffirms the power which the President already has to seize such industries—and this the President has already done. It seeks to curb and prohibit a strike

against the Government of the United States, for the present railroad strike is not a strike against the carriers. It is a challenge to the authority of the President of the United States. It is a flouting of the Congress. It is a cruel and irresponsible gesture of contempt to the American people.

Briefly, this bill provides that once the President, acting as the Chief Executive of the Nation, has found that a work stoppage seriously affecting the health and safety of the people is imminent and has seized an industry, persons who continue to strike against the Government of the United States shall lose their status as "employees" within the meaning of the Labor Relations Act. This means that an employee striking against his Government loses his seniority.

Of all the railroad brotherhoods, the Organization of Railroad Engineers has been one of the best. Engineers are usually oldest in point of service on a railroad. They are responsible, sober, loyal, and patriotic citizens. They have worked up to the position of engineers, and they are well paid and should be. Under the award of the President's fact-finding board, which has already been accepted by the carriers and by all but two of the brotherhoods, the average pay of a railroad engineer will be \$5,700. It is more than the Governor of many States receive. It is more than the judges in many parts of the country receive. It is greater compensation than is paid to the mayors of many large cities. I submit that it is a figure that meets with the approval of most of the men affected. If not, further negotiations can be had, but they must be had while rail traffic continues to move.

The bill does not in any way prohibit a strike against a private employer. It simply outlaws and prohibits a strike against the sovereign power of the United States, which must be superior to the right and power of any other individual or group if we are to survive as a great nation. The bill interferes in no way with subsequent collective bargaining negotiations between employer and employee during the period of Government seizure. It would merely provide, in the instant case, that trains engaged in interstate commerce would continue to roll.

Never in the history of the country have we faced an industrial crisis such as confronts us today. Trains cannot run without engineers, and when those vital employees walk out, commerce ceases to move. Here in the Nation's Capital I am informed that only two trains out of many hundreds normally operated, will move from Washington to New York today. By Monday suffering and want will stalk this land, and if the strike continues many days, sickness and epidemics are inevitable. The House leadership has wisely and prudently decreed that the House will be in session tomorrow. We can be in session until midnight if necessary. We can act either on the bill just introduced or on the Senate version, if that body should pass legislation today. No longer can we wait for deliberative action. Passage of the bill just introduced will, in my opinion, terminate the present strike of engineers, and knowing

engineers as I do, I say they will welcome this legislation. They are not striking against their Government through choice but because they are ordered to do so. They can and must return, and the passage of this legislation, which could receive the President's signature before the week end is out, will avert a national disaster of inconceivable magnitude.

Mr. SABATH. Mr. Speaker, I yield 3 minutes to the gentleman from North Carolina [Mr. ERVIN].

Mr. ERVIN. Mr. Speaker, I ask unanimous consent to proceed out of order, and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. ERVIN. Mr. Speaker, our economic house is on fire. The Committee on Labor has appointed a subcommittee to investigate the causes of the fire. It seems to me it would be wiser to take some steps to pour a little water on the fire and try to extinguish it, rather than to investigate the causes of the fire while the house burns down.

Mr. SABATH. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

Mr. SUMNERS of Texas. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (S. 7) to improve the administration of justice by prescribing fair administrative procedure.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill S. 7, with Mr. SMITH of Virginia in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

Mr. SUMNERS of Texas. Mr. Chairman, I yield 15 minutes to the gentleman from Pennsylvania [Mr. WALTER].

I. THE PROBLEM

Mr. WALTER. Mr. Chairman, for a generation Americans have been brought face to face with new forms or methods of government, which we have come to call administrative law. It is administrative because it involves the exercise of legislative and judicial powers of government by officers, who are neither legislators nor judges. It is law because what they do is binding upon the citizen exactly as statutes or judgments are binding.

The people of the country have been of different minds about this new phenomenon. Thirty years ago they were arguing about its validity under the constitutional system of the United States. Twenty-five years ago the argument had shifted to questions of how far the courts should be authorized to control administrative operations. Within the last 10 years the emphasis has swung to problems of administrative organization and administrative procedure.

The plain fact is that administrative government, or administrative justice, as

it is sometimes called, has been with us a long time and is obviously here to stay. In the last 15 years it has grown by leaps and bounds. Thirty years ago a distinguished statesman, Elihu Root, put the problem in words which have not since been improved upon. He then said:

There is one special field of law development which has manifestly become inevitable. We are entering upon the creation of a body of administrative law quite different in its machinery, its remedies, and its necessary safeguards from the old methods of regulation by specific statutes enforced by the courts. As a community passes from simple to complex conditions the only way in which government can deal with the increased burdens thrown upon it is by the delegation of power to be exercised in detail by subordinate agents, subject to the control of general directions prescribed by superior authority. The necessities of our situation have already led to an extensive employment of that method. The Interstate Commerce Commission, the State public service commissions, the powers of the Federal Reserve Board, the health departments of the States, and many other supervisory offices and agencies are familiar illustrations. Before these agencies the old doctrine prohibiting the delegation of legislative power has virtually retired from the field and given up the fight. There will be no withdrawal from these experiments. We shall go on and we shall expand them, whether we approve theoretically or not, because such agencies furnish protection to rights and obstacles to wrong doing which under our new social and industrial conditions cannot be practically accomplished by the old simple procedure of legislatures and courts as in the last generation. Yet the powers that are committed to these regulating agencies, and which they must have to do their work, carry with them great and dangerous opportunities of oppression and wrong. If we are to continue a government of limited powers these agencies of regulation must themselves be regulated. The limits of their power over the citizen must be fixed and determined. The rights of the citizen against them must be made plain. A system of administrative law must be developed, and that with us is still in its infancy, crude and imperfect.

Similarly, 20 years ago, Charles Evans Hughes had this to say:

Legislators have little time to follow the trails of expert inquiry and so we turn the whole business over to a few with broad authority to make the actual rules which control our conduct. The exigency is inescapable but the guardians of liberty will ever be watchful lest they are rushed from legislative incapacity into official caprice. If we escape bureaucracy it will not be because of dissertations on delegations of legislative authority. We are a practical people and necessary delegations will not fail to find reasons to support them. It will be only because we never lose sight of the ultimate purpose of government, because we would rather take some risks than give too much leeway to officialism, because we refuse to establish or maintain power for its own sake, and because we have the assertiveness of the unbroken will of freemen who will insist that every public officer must constantly feel that he is a servant and not a master, the servant of an intelligent community which is content with thorough investigation and impartial findings and scientific applications, but is not servile and is able and quick to detect favoritism or arbitrariness. It will be for the reason that we are not willing to exchange our birthright for a mess of administrative pottage, no better for being prepared by democratic cooks.

These are statements of great men, learned in the art of government and in the technique of the law. Their measured language, however, is merely the echo of history and common sense of English-speaking peoples. On the eve of the American Revolution the great Pitt warned that "unlimited power corrupts the possessor." Our Declaration of Independence, which followed a few years later, charged that the British King had "sent hither swarms of officers to harass our people," sponsored "arbitrary government," sought to introduce "absolute rule into these Colonies," and proposed to alter "fundamentally the forms of our governments." Those were the words of Thomas Jefferson, used to describe the administrative tyranny of the time.

Other people in other walks of life have recognized and expressed the same ideas here and abroad. In 1901 the great historian who was also Bishop of London uttered these historic words:

Power tends to corrupt, and absolute power corrupts absolutely.

Even the poets have had their say, as in these words from the pen of Shelley:

Power, like a desolating pestilence,
Pollutes whate'er it touches.

Today, in the backwash of the greatest war of history, we need not be reminded of the abuses which inevitably follow unlimited power.

II. LEGISLATIVE HISTORY

The situation has not been ignored by the Congress of the United States. For 10 years it has been considering legislation. The difficulty has been the complexity of the subject, the disturbances of the times, and world-shaking events in the international sphere. In considering the legislative proposals presented since 1933, the Congress has held many hearings and its committees have issued many reports on the subject.

The executive branch also has been concerned. The late President Franklin D. Roosevelt initiated or approved two major investigations on the subject, both of which resulted in legislative recommendations of far-reaching consequence. Our great Attorney General, the Honorable Tom Clark, has participated in the drafting of the present bill, and he has repeatedly endorsed it.

The history of these activities is set forth at length at pages 7 to 16 of the report of the Committee on the Judiciary respecting the present bill. While various proposals have been made over the years, the continuous line of development leading to the present bill is there for all to read. In 1937, when transmitting to the Congress the report of his Committee on Administration Management, President Roosevelt stated that the practice of creating administrative agencies, which perform administrative work in addition to judicial work, threatens to develop a "fourth branch" of the Government, for which there is no sanction in the Constitution. In 1938 the Senate and House Committees on the Judiciary investigated very thoroughly the proposal for the creation of an administrative

court. In 1939 and 1940, Congress passed an administrative-procedure bill which President Roosevelt vetoed because, as he stated in his message to this body, he desired to await the report of the Attorney General's Committee on Administrative Procedure, which had then been at work for over a year pursuant to instructions to make a thorough study and comprehensive recommendations.

In 1941 the Attorney General's Committee, after some 2 years of labor and issuance of numerous printed studies of the operations of important agencies of the Federal Government, issued its final report. Legislative hearings were held in April, May, June, and July of the same year on the legislative proposals growing out of the work of that Committee.

War intervened. It was not until 1944 that the Judiciary Committees of both Houses could again become active respecting this problem.

So much had been done in the prior years that it was perfectly obvious that the problem remaining was one of draftsmanship. In reaching the final form of the bill the executive branch and private interests of every kind were called into consultation over a period of a year or more as is set forth at pages 14 to 16 of the report of the Committee respecting the present bill.

With the details of this very extended legislative history I shall do no more than refer the Members of the House to the Committee report. It is a comprehensive document. It sets forth all the official history of this bill and its predecessors.

III. THE GENERAL STRUCTURE OF THE BILL

Many people who approach the subject of general administrative law legislation either conceive the problem as one which is very simple, or as one which is so complex as to be impossible. Neither impression is correct.

Granted that Federal powers are going to be exercised and that they are going to be exercised through administrative agencies, there is no simple panacea. To expand court review would not, for example, remedy the administrative situation at its source. To adopt some drastic system of independent hearing officers would not take care of the vast area of governmental activity where there are no hearings. To require hearings in all cases would add unnecessary burdens in the business of government and would at the same time deprive the citizen of the need for speed where quick action is desirable.

Nor on the other hand is administrative operation so complex in its fundamentals that it cannot be grasped by an intelligent mind and regulated by simple statute. It is true that the number of administrative agencies is great. The number of subjects with which they deal is even greater. The number of administrative powers almost passes beyond conception. But what administrative officers or agencies do falls into a few simple categories.

We are not here concerned so much with mere custodial or managerial tasks of administration. But we are con-

cerned with administrative powers which are compulsory in their nature. We are mainly concerned with administrative processes, in other words, which are regulatory in their effect. Compulsory or regulatory administrative operations fall into three main groups:

First, there are the legislative functions of administrative agencies, where they issue general or particular regulations which in form or effect are like the statutes of the Congress. Among these are such regulations as those which state minimum wage requirements or agricultural marketing rules. Congress—if it had the time, the staff, and the organization—might itself prescribe these things. Because Congress does not do so itself and yet desires that these things be done, the legislative power to do them has been conferred upon administrative officers or agencies.

The second kind of administrative operation is found in those familiar situations in which an officer or agency determines the particular case just as, in other fields of law, the courts determine cases. Examples of this type of administrative operation are the injunctive orders issued by the Federal Trade Commission. Other agencies are authorized to award damages, which are usually called reparations in the administrative field. What the agencies do in these cases is to determine, just as a court might determine, the liability of a party or the redress to which a party is entitled in a specific case on a specific state of facts and under stated law.

The third type of administrative compulsory power may be incidental to either legislative or judicial powers of administrative agencies, or it may be entirely independent of either. I refer to the compulsory action of administrative agencies when they issue subpoenas, require records or reports, or undertake mandatory inspections. These functions are investigative in nature. The investigation may be made in connection with their legislative or judicial functions, or it may be made for the purpose of submitting a report to Congress or to refer prosecutions to a grand jury. Whatever the purpose, the administrative arm is given power to require information to be submitted to it.

The present bill carefully distinguishes between these three basic types of administrative regulatory powers. Indeed it goes further, and within these types of powers or operations it frequently makes differentiations and exceptions. For example, in connection with the legislative or rule-making function, the bill differentiates several kinds of rules such as rules of procedure as distinguished from rules of substance. Also, in connection with the judicial function of administrative agencies, the bill differentiates between adjudications made in connection with foreign or military affairs as distinguished from those in the domestic or civil field.

But this bill does more than merely analyze the administrative process and lay down the forms of procedure for each. It really deals with three separate subjects: First, public information;

second, administrative operation; and third, judicial review.

The first operative section of the bill is basic and requires agencies to issue certain information which is essential to inform the public about the substance and the procedure of administrative law. It requires that agencies state their organizational set-ups, promulgate statements respecting their procedures, and make available as regulations the substantive and interpretative rules which they have framed for the guidance of the public.

Sections 4, 5, 6, 8, 9, and 11 deal with administrative operations. Section 4 relates to the legislative functions of administrative agencies and provides that where Congress has not required hearings, with some exceptions, the agency shall give notice of the making of proposed regulations and afford interested parties an opportunity for the informal submission and consideration of their views or requests. Section 5 deals with administrative adjudications of particular cases where Congress has required adjudications to be made upon a hearing. Sections 7, 8, and 11 spell out the details of hearing and decision procedures in all cases in which, by other legislation, Congress has required an agency hearing. Section 9 states certain limitations upon the penalties or relief which agencies may impose or confer in any case. Section 6 deals with the investigative powers and other incidental matters of importance.

In the all-important field of judicial review section 10 is a complete statement of the subject. It prescribes briefly when there may be judicial review and how far the courts may go in examining into a given case.

I shall discuss all these matters in greater detail next in taking up the bill section by section, subsection by subsection.

Before doing so, however, I should like to refer the Members of the House to the diagrammed synopsis of the bill which will be found at pages 28 and 29 of the committee report. There, as nearly as possible within the limitations to the printed page, is presented a diagram sketch of the provisions and operation of the bill. I should also like to refer the House to Appendix A of the committee report, at pages 49 to 56, which indicates the changes made by the committee amendment in the bill as it passed the Senate. There is shown not only the changes made in the text of the bill, but footnotes explain the reason for each change. I think I may say with confidence that these changes have been acceptable to all who have labored in the drafting of this measure. The bill as it passed the Senate was a good bill, but the subject is one of such great importance and of such far-reaching effect that the committee has felt it wise to make numerous changes for purposes of clarification and in order to leave no doubt as to what is intended by the legislation.

IV. DETAILED PROVISIONS

In taking up the specific provisions of the bill as reported to the House, I will not attempt to restate all of the detail which appears in the committee report

at pages 18 to 48. I shall try, however, to emphasize those things which are of paramount importance and at the same time state how the provisions of the bill as a whole are intended to operate.

DEFINITIONS, SECTION 2

In a bill of this kind the definition section is of great importance. The definitions in section 2 simplify the remaining provisions of the bill. They also make more precise the kinds of operations which are included in the terms used in the bill.

AGENCY, SECTION 2 (A)

The definition of agency in section 2 (a) of the bill is perfectly simple and consists of two elements: First, there are excluded legislative, judicial, and territorial authorities. Secondly, there is included any other authority regardless of its form or organization. In short, whoever has the authority to act with respect to the matters later defined is an agency.

However, except for the public information requirements of section 3, there are expressly exempt from the term "agency" all those composed of representatives of parties to the disputes decided by them. The reason for this exception is that agencies of that kind, such as the National Railroad Retirement Board and Railroad Adjustment Board, are a special class. On the other hand, the National Mediation Board, another agency established under the Railway Labor Act, and not an agency composed of representatives of the parties or of representatives of organizations of the parties to disputes determined by them, is an agency within this definition and therefore since the parties themselves are represented in the agencies, the problem of administrative procedure is altered. It was therefore deemed best not to attempt to deal with this peculiar type of administrative agency.

For obvious reasons there are also excepted defined war authorities functioning under temporary or named statutes. Purely military and naval functions should obviously be exempt. It simply was not wise to attempt to adapt the bill to the functioning of civilian defense authorities because of their temporary nature and because the Congress has separately legislated respecting them.

PERSON AND PARTY, SECTION 2 (B)

I think nothing need be said about the definition of "person" and "party" in section 2 (b), since it is obvious on its face.

RULE AND RULE MAKING, SECTION 2 (C)

The definition of "rule" and "rule making" in section 2 (c) is very important. It defines the legislative function of administrative agencies. Here I might say there is great confusion in the terms used in the field of administrative law. The word "regulations" is sometimes improperly used to embrace the decisions of particular cases. Also, regulations are often called something other than rules or regulations. Thus we find that regulations specifying prices or rates are more often than not called orders. Similarly, Treasury regulations are customarily called decisions. To the person who is not expert in the field of administrative law, the confusion of

terminology is baffling. From time to time new terms are invented, such as the word "directive."

In this bill the accepted analytical terminology has been adopted. Accordingly we speak of rule or rule making whenever agencies are exercising legislative powers. We speak of orders and adjudications when they are doing things which courts otherwise do.

The definition of "rule" and "rule making" in section 2 (c) is of paramount importance. Upon that definition depends the application or nonapplication of later sections of the bill. The rule making requirements are simpler than the adjudication requirements of the bill.

"Rule" is defined as any agency statement of general or particular applicability and future effect designed to state the law, policy, organization, procedures, or practice requirements of any administrative agency. The definition follows that of the Federal Register Act, with some additional language for purposes of clarification and certainty. In rule making an agency is not telling someone what his rights or liabilities are for past conduct or present status under existing law. Instead, in rule making the agency is prescribing what the future law shall be so far as it is authorized so to act. Advisory interpretative rulings in particular cases, however, are not "rules" within this definition.

ORDER AND ADJUDICATION, SECTION 2 (D)

"Order" and "adjudication" as defined in section 2 (d) cover the judicial function of administrative agencies. They embrace all of the decisions that agencies make in matters other than rule making. Two items in the definition should be noted. First, "licensing" is expressly included. Secondly, injunctive orders—such as those issued by the Federal Trade Commission—are also expressly included.

LICENSE AND LICENSING, SECTION 2 (E)

The definition of "license" in section 2 (e) is included in order to embrace every form of operation where a private party is required to take the initiative in securing the official permission of a governmental agency.

SANCTION AND RELIEF, SECTION 2 (F)

The definition of "sanction" or "relief" in section 2 (f) is included mainly for the purpose of simplifying the language of sections 9 and 10. As they show on their face, those terms are meant to be all embracing.

AGENCY PROCEEDINGS AND AGENCY ACTION, SECTION 2 (G)

The final definition of "agency proceeding" and "agency action" in section 2 (g) is included in order to simplify the language of later provisions of the bill.

The important definitions in section 2 are the definitions of "agency," "rule," and "order." Those are basic. The other definitions are included either for purposes of clarification or to simplify the remaining sections of the bill.

PUBLIC INFORMATION, SECTION 3

As heretofore indicated, the public information requirements of section 3 are among the most important and useful provisions of the bill. Excepted are mat-

ters requiring secrecy in the public interest—such as certain operations of the Secret Service or FBI—and matters relating solely to the internal management of an agency.

RULES REQUIRED TO BE PUBLISHED, SECTION 3 (A)

Apart from those exceptions, agencies are required by section 3 (a) to publish, first, their organization and delegations of final authority, second, a statement of their methods and rules of procedure regarding each of their functions; and, third, the substantive rules they are authorized to make and their interpretative rules or policies issued for the guidance of the public. Publication is not required as to rules addressed to and served upon named parties in accordance with law.

These requirements are enforced by the provision that no person shall in any manner be required to resort to organization or procedure not so published. This means, among other things, that the accepted rule respecting the exhaustion of administrative remedies would not apply where the agency has not published the required information respecting organization or procedures. However, the requirement that agencies must separately state these several kinds of rules does not mean that agencies would be required to revise and republish all their existing rules, but would simply have to issue organizational and procedural rules for future cases, and in the future such substantive rules as they may issue must be free of the frequent hodgepodge of organizational and procedural matter.

The effect of this subsection will be to require all agencies to issue at least two rules or sets of rules—one respecting their organization and the other respecting their procedures. In addition, where they are authorized to issue substantive rules—such as price regulations—or where they issue statements of policy—as in the Communications Commission—or interpretative rules—as in the Bureau of Internal Revenue—they would issue a third body of materials. The effect will be that parties will understand the country-wide organization of administrative agencies and their methods of procedure, as well as have access to the regulations and general interpretations in matters of substance which the agency has framed for the guidance of the public.

In this connection I would like to call the attention of the House to the fact that the Attorney General's Committee on Administrative Procedure, which was appointed at the direction of the President of the United States and which functioned from 1939 to 1941, was emphatic and unanimous on this subject. It stated the situation thus:

Few Federal agencies issue comprehensive or usable statements of their own internal organization—their principal offices, officers, and agents, their divisions and subdivisions; or their duties, functions, authority, and places of business. * * * Yet without such information, simply compiled and readily at hand, the individual is met at the threshold by the troublesome problem of discovering whom to see or where to go.

The Attorney General's Committee on Administrative Procedure unanimously agreed that "laymen and lawyers alike

are baffled by a lack of published information to which they can turn when confronted with an administrative problem"—Final Report, page 25. The chairman of that Committee further explained this situation to a subcommittee of the Senate as follows:

The agency is one great obscure organization with which the citizen has to deal. It is absolutely amorphous * * * No one seems to have specific authority * * * That is what is baffling. (Hearings, Senate Judiciary Subcommittee, on S. 674, 675, and 918, pt. II, 77th Cong., 1st sess., p. 807.)

But the present situation is even more serious than that when those statements were made. Every Member of Congress is well aware of the difficulty of finding one's way about in the maze of Federal agencies. That being so, the problem of the citizen west of the Potomac is a hundred-fold more difficult.

OPINIONS AND ORDERS, SECTION 3 (B)

In the case of opinions and orders issued by agencies in the exercise of their judicial functions, section 3 (b) of the bill requires them either to be published or made available to public inspection except where held confidential for good cause. All rules must be either published or made available to public inspection but, as heretofore stated, interpretative rulings in particular cases are not rules.

PUBLIC RECORDS, SECTION 3 (C)

Section 3 (c) also requires agencies to make matters of official record available to inspection except as by rule it may require them to be held confidential for legal cause.

RULE MAKING, SECTION 4

Section 4 deals with the very important subject of rule making. From it, however, are exempted: First, military, naval, or foreign affairs functions; and second, matters relating to agency management or personnel or to public property, loans, grants, benefits, and contracts. The exemption of military and naval functions needs no explanation here. The exempted foreign affairs are those diplomatic functions of high importance which do not lend themselves to public procedures and with which the general public is ordinarily not directly concerned. The exemption of proprietary matters is included because in those cases the Government is in the position of an individual citizen and is concerned with its own property, funds, or contracts.

NOTICE OF RULE MAKING, SECTION 4 (A)

There are two particularly important aspects of section 4 (a), which deals with the notice of rule making. In the first place, where notice is required, it should be complete and specific as the subsection indicates on its face. In the second place, except where notice and hearing are required by some other statute, the agency by this provision is authorized to dispense with notice where it finds for good cause that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. This latter is not an escape clause but one which, as the committee report explains, may be made operative only where facts and interests are such that notice and

proceedings are impossible or manifestly unnecessary.

PROCEDURES, SECTION 4 (B)

The second subsection of section 4 is designed to provide that, where other statutes do not require an agency hearing, the legislative functions in administrative agencies shall, so far as possible, be exercised only upon some form of public participation after notice. That is, an agency may permit parties to submit written statements, confer with industry advisory committees, hold open meetings, and the like. Whatever method is adopted, the agency must consider the data or argument so presented by interested people and incorporate a concise general statement of their basis and purpose in any rules it issues.

The effect of this provision will be to enable parties to express themselves in some informal manner prior to the issuance of rules and regulations, so that they will have been consulted before being faced with the accomplished fact of a regulation which they may not have anticipated or with reference to which they have not been consulted. This provision will make for good public relations on the part of administrative agencies. Wisely used and faithfully executed, as it must be, it should be of great aid to administrative agencies by affording them a simple statutory means of apprising the public of what they intend to do and affording the interested public a nonburdensome method of presenting its side of the case. Day by day Congress takes account of the interests and desires of the people in framing legislation; and there is no reason why administrative agencies should not do so when they exercise legislative functions which the Congress has delegated to them.

EFFECTIVE DATE OF RULES, SECTION 4 (C)

Under section 4 (c) agencies are required, in addition to the foregoing, to defer the effective date of any substantive rule for not less than 30 days except as they may specifically provide otherwise for good cause or in the case of rules recognizing exemptions or relieving restrictions, and so forth. This section places the burden upon administrative agencies to justify in law and fact the issuance of any rule effective in less than 30 days. Rules may be made effective in a legally reasonable time less than 30 days because of the shown urgency of conditions coupled with demonstrated and unavoidable limitations of time. The section requires agencies to proceed with the convenience or necessity of the people affected as the primary consideration, so that an agency may not itself be dilatory and then issue a rule requiring compliance forthwith.

PETITIONS, SECTION 4 (D)

Section 4 (d) is of the greatest importance because it is designed to afford every properly interested person statutory authority to petition for the issuance, amendment, or repeal of a rule. No agency may receive such petitions in a merely pro forma manner. Every agency possessing rule-making authority will be required to set up procedures for the receipt, consideration, and disposition of

these petitions. The right of petition is written into the Constitution itself. This subsection confirms that right where Congress has delegated legislative powers to administrative agencies. As in connection with the prior provisions of section 4, this subsection should be a most useful instrument for both improving the public relations of administrative agencies and protecting the public by affording interested persons a legal and regular means of securing the issuance, change, or rescission of a rule.

ADJUDICATION, SECTION 5

Section 5 relates to the judicial function of administrative agencies where they decide specific cases respecting compliance with existing law or redress under existing law. It applies, however, only where Congress by some other statute has prescribed that the agency shall act only upon a hearing and, even in that case, there are six exceptions. The requirements of section 5 are thus limited to cases in which statutes otherwise require a hearing because, where statutes do not require an agency hearing, the parties affected are entitled to try out the pertinent facts in court and hence there is no reason for prescribing informal administrative procedures beyond the requirements of section 6 which I will discuss presently. The right of trial de novo in judicial review in cases where agencies do not proceed upon a statutory hearing will also be discussed later in connection with section 10 (e).

As stated, even where statutes require an agency hearing, this section does not operate respecting, first, matters subject to trial de novo in court; second, the selection or tenure of public officers other than examiners; third, decisions resting solely on inspection, tests or elections; fourth, military, naval, or foreign affairs functions; fifth, cases in which an agency is acting for a court; sixth, the certification of employee representatives. I think that little need be said about these exceptions. Where although the agency is required to hold a hearing the facts are nevertheless subject to retrial in court, it has seemed fairly obvious that the parties are adequately protected at the judicial stage of the proceedings so that there is no great reason to require additional formalities in the administrative process itself. I am not aware of any clear statutory provision that the selection or tenure of public officers is subject to a statutory agency hearing, but the exception has been included because the situation is a special one for Congress to decide by separate legislation. Where decisions rest solely on inspections, tests, or elections it is clear that the hearing and decision requirements applicable in other cases have no place. The exemption of military, naval, or foreign affairs functions is again obvious; moreover, it does not appear that statutes require hearings in such matters. I have heretofore commented on the meaning of the term "foreign affairs." Where an agency is acting for a court, and thereby its factual and legal basis of action is subject to judicial control in toto, there is no reason for insisting upon any particular form of administrative formality. Certification of employee representatives is ex-

empted because the determinations in those cases so largely rest either upon an election or its availability.

NOTICES, SECTION 5 (A)

Subsection (a) of section 5—respecting notices in the exercise of the judicial function of administrative agencies—is designed mainly to assure that such notices are adequate, particularly in the matter of stating the particular issues of law or fact which parties must meet. In that connection I wish to call the attention of the House to the unanimous conclusion of the Attorney General's Committee on Administrative Procedure. It reads as follows—report, pages 62-63:

The individual immediately concerned should be apprised not only of the contemplated action with sufficient precision to permit his preparation to resist, but, before final action, he should be apprised of the evidence and contentions brought forward against him so that he may meet them. * * *

A * * * prerequisite to fair formal proceedings is that when formal action is begun, the parties should be fully apprised of the subject-matter and issues involved. Notice, in short, must be given; and it must fairly indicate what the respondent is to meet. * * *

Room remains for considerable improvement in the notice practices of many agencies. * * * Too frequently, this notice is inadequate. * * * The applicant is put to his proof on such broad issues as public interest, convenience, and necessity. * * * Agencies not infrequently set out their allegations in general form, perhaps in statutory terms, thus failing fully to apprise the respondents and to permit them adequately to prepare their defenses.

ADJUDICATION PROCEDURE, SECTION 5 (B)

Subsection (b) of section 5 simply provides that, apart from notice, parties must be afforded opportunity for the settlement of cases in whole or in part and, to the extent that issues are not so settled, by hearing and decision in compliance with the later provisions of the bill. There are of course cases where time, the nature of the proceeding, and the public interest do not permit settlements; but those situations have been taken care of on the face of the subsection. The settlement by consent provision is extremely important because agencies ought not engage in formal proceedings where the parties are perfectly willing to consent to judgments or adjust situations informally. Here again I should like to quote the statement from the unanimous report of the Attorney General's Committee on Administrative Procedure as follows—pages 35, 39, 40, 41:

It is of the utmost importance to understand the large part played by informal procedure in the administrative process. * * *

In cases of (claims and license applications) formal proceedings in the first instance are undesirable from the point of view of the individual and the Government. * * * Only after these applications have passed through the sieve of initial decision—which in most cases satisfactorily ends the matter—is it necessary or possible to have formal proceedings. * * *

In most cases in which a person applies for some official permission, the agency, if satisfied that the permission is proper, grants it without any formal proceedings. Sometimes the public interest in a full record of the grounds of decision is thought so im-

portant by Congress that formal proceedings and a formal record are required by law. * * * But there are other cases where formal proceedings are required either by the terms of the statute or by administrative interpretations in which, in the committee's opinion, something less would fully protect the public interest and make for more expeditious dispatch of business. * * *

It often occurs that after an agency has investigated a complaint filed with it, the person or persons complained of and the agency may agree as to the principal evidentiary facts and may also agree that the acts complained of should not be repeated. A frequent obstacle to settlement by consent is the reluctance of persons to make an admission that they acted with an illegal or unethical intent or purpose. It is in this area that consent dispositions are employed, are highly desirable, and can be extended by some improvement in procedures.

SEPARATION OF FUNCTIONS, SECTION 5 (C)

Subsection (c) of section 5 deals with the well-known problem of separating prosecuting and deciding functions. It provides that the officer who takes the evidence must decide the case or recommend a decision unless he should become unavailable to the agency. Those officers may not hold ex parte private conferences. They may not be subject to the supervision of prosecuting officers, and prosecuting officers may not participate in decisions except as witnesses or counsel in public proceedings. However, the subsection does not apply in determining applications for initial licenses, because it is felt that the determination of such matters is much like rule making and hence the parties will be better served if the proposed decision—later required by section 8—reflects the views of the responsible officers in the agencies whether or not they have actually taken the evidence. It does not apply in cases concerning the validity or application of rates, facilities, or practices of public utilities or carriers because these types of cases are customarily consolidated with rule-making proceedings where the separation of functions is not required so that, unless excepted from this provision, either rule making would be restricted beyond the intent of the bill or consolidated proceedings would be impossible. Also, the subsection does not apply to the top agency or members thereof because from the very nature of administrative agencies, in which ultimate authority is fixed in one place respecting both prosecution and decision, it is impossible to deprive heads of agencies of authority over the prosecutors for whom they are ultimately responsible.

Despite these exceptions, which have seemed necessary at least until more is known about the operation of an Administrative Procedure Act, this section is of great importance because it is an attempt to deal with one of the critical sectors of administrative operation. It does not provide for a complete separation of functions in the sense that hearing officers are entirely and physically separated from the agencies in which they operate. This bill adopts the "internal" separation of functions and in addition, as I will point out when I come to section 11, provides salary and tenure independence for examiners even though they may be selected by and attached to a particular agency. The problem is

discussed at pages 55 to 57 of the final report of the Attorney General's Committee on Administrative Procedure. This bill follows generally the recommendations of that committee, although by a somewhat different route.

DECLARATORY ADJUDICATIONS, SECTION 5 (D)

The last subsection of section 5 authorizes agencies, in their sound discretion, to issue declaratory orders with the same effect as other orders. Since agencies exercise judicial functions, it has been deemed wise, for the benefit of the public and people subject to administrative adjudications, to confer upon them authority by this subsection to do the same things that courts do under the Declaratory Judgment Act. In other words, administrative agencies should at least be as free to act irrespective of the technical rules of case or controversy as courts are. Indeed, without this provision, in cases involving administrative powers, there is a blind spot in our law—for parties can neither secure a declaratory judgment from the courts nor a declaratory order from the administrative agency. Parties faced with a situation in which they desire a declaratory adjudication would under this provision be authorized to ask an agency to rule upon the situation; and the ruling of the agency would be subject to judicial review and all other requirements as in other cases. Administrative authority so to act has been widely urged. This provision, however, narrows the authority to those cases in which agencies act upon a statutory hearing and subject to the safeguards of sections 5, 6, 7, 8, 9, and 11 of this bill.

OTHER MATTERS, SECTION 6

Section 6, entitled "Ancillary Matters," brings together a number of incidental rights, powers, and procedures, including limitations on compulsory investigative powers. These provisions are important, although they do not necessarily relate in all cases to either public information, rule making, or adjudication as dealt with in the previous sections.

APPEARANCES OR REPRESENTATION, SECTION 6 (A)

Section 6 (a) deals with the right of parties to have the advice or representation of counsel or, to the extent that agencies lawfully permit it, representation by nonlawyers. The representation of counsel contemplated by the bill means full representation as the term is understood in the courts of law. Counsel may thus receive notices, decisions, and awards. Agencies are not authorized in any manner to ignore or bypass legal representatives that parties have selected for themselves pursuant to this section. The section also confers a statutory right for any interested person to appear before any agency or its responsible officers at any time for the presentation or adjustment of any matter, and this is particularly important as—among other things—authorizing the settlement of cases in whole or part. It also requires agencies to proceed with reasonable dispatch.

INVESTIGATIONS, SECTION 6 (B)

The second subsection of section 6 limits any form of investigative process to authority conferred upon an agency by

law. This limitation will require any agency to justify its process in case of a contest thereof by demonstrating that upon the law and the facts it is acting within its proper sphere of operations. The subsection also provides that those compelled to submit data or evidence shall either be entitled to copies thereof or, in cases in which the situation clearly demands that no copies be made, to inspect them in person or through counsel.

SUBPENAS, SECTION 6 (C)

Subsection (c) of section 6 provides that, where Congress has authorized agencies to issue subpoenas, private parties may secure them upon an equality with Government representatives and without any more than a general showing of relevance and reasonable scope of the information sought. Where administrative subpoenas are contested, the court is to inquire into the situation and issue an order of enforcement only so far as the subpoena is found to be in accordance with law. This is a definite statutory right and is applicable to subpoenas of every kind addressed to any person under authority of any law. The effect of the subsection is thus to do more than merely restate the existing constitutional safeguards which in some cases, such as those involving public contractors—see *Endicott Johnson Corp. v. Perkins* (317, U. S. 501, 507, 509, 510 (1943)), have been held inapplicable. Also, the term "in accordance with law" does not mean that a subpoena is valid merely because issued with due formality. It means that the legal situation, including the necessary facts, demonstrates that the persons and subject matter to which the subpoena is directed are within the jurisdiction of the agency which has issued the subpoena.

DENIAL OF REQUESTS, SECTION 6 (D)

The final subsection of section 6 requires agencies to give prompt notice of the denial of any request made in any agency proceeding, and to accompany that notice with a simple statement of the procedural or other grounds for the action of the agency. Under this provision, if the ground is procedural, the agency would be required to state any available further or alternative remedies open to the party. If the ground is not procedural, the agency would be required to make a simple statement of the legal or factual basis of its action.

HEARINGS, SECTION 7

It will be recalled that section 4—relating to rule making—and section 5—relating to the determination of particular cases—refer to situations in which Congress has by some other statute required an agency to act upon a hearing. Accordingly sections 7 and 8, which I am about to discuss, state the requisites of statutory agency hearings and decisions.

PRESIDING OFFICERS, SECTION 7 (A)

The first subsection of section 7 requires an agency to hold hearings itself, or through a member or members of the board which comprises it, or by one or more examiners qualified as provided in section 11 of the bill, or through other officers specially provided for or designated pursuant to the authority contained in other statutes. Whoever presides must

do so impartially. They may withdraw if they deem themselves disqualified or, if an affidavit of personal bias or disqualification is filed against them, the agency must determine the issue as a part of the record and decision in the case.

This provision authorizes agencies, if they do not wish to head cases themselves, to delegate the hearing function to the named types of presiding officers. It does not mean, however, that agencies are authorized—whether pursuant to the express authority of other statutes or not—to avoid the examiner system—set up in this bill and hereafter discussed—by assigning general employees or attorneys to hear cases individually or as boards. In short, unless the agency or its members or some specially qualified statutory officer hears the case, an examiner qualified under section 11 of this bill must do so.

Of particular importance in this subsection is the requirement that any presiding officer must act impartially rather than as a prosecutor. These provisions mean that presiding officers will be required to conduct themselves in the manner in which people think they should—that is, as judges and not as the representatives of factions or special interests.

HEARING POWERS, SECTION 7 (B)

Subsection (b) of section 7 lists the commonly accepted kinds of powers which it is generally conceded that officers who preside at hearings ought to have. These include administering oaths, issuing authorized subpoenas, receiving or excluding evidence, taking depositions, generally regulating the hearing, holding informal conferences with the parties for the settlement or simplification of issues, disposing of procedural requests such as those for adjournment, and the like. In exercising these powers, of course, presiding officers will be bound by relevant legal limitations.

EVIDENCE, SECTION 7 (C)

Subsection (c) of section 7 is one of the more important provisions of the bill. In its final report the Attorney General's Committee on Administrative Procedure stated that—pages 70-71:

Although administrative agencies may be freed from observance of strict common-law rules of evidence for jury trials, it is erroneous to suppose that agencies do not, as a result, observe some rules of evidence. * * * Abuses in admitting remote hearsay and irrelevant or unreliable evidence there surely have been. * * * That strict adherence to standards of relevance and probative value should be observed needs no underscoring. A diffuse record dissipates the energies of the parties and the deciding authorities and distracts attention from the issues. Careless admission of evidence for what it is worth—a practice not infrequent among trial examiners—swells the record beyond its necessary limits.

Section 7 (c) of this bill provides that the proponent of a rule or order has the burden of proof except as statutes otherwise provide. It authorizes agencies to receive any evidence, although as a matter of policy they are required to provide for the exclusion of irrelevant, immaterial, or unduly repetitious matter. Thus, the mere fact that such matter is in the record would not of itself be reversible error. The principal provision of the

subsection provides that no sanction may be imposed or rule or order be issued except upon consideration of the whole record or such portions as any party may cite and as supported by and in accordance with reliable, probative, and substantial evidence. The parties are authorized to present documentary, oral, and rebuttal evidence and to conduct reasonable cross-examination. In rule making or determining applications for initial licenses agencies may adopt procedures for the submission of the evidence in written form, so far as the interest of any party will not be prejudiced thereby.

The requirement that agencies may act only upon relevant, probative, and substantial evidence means that the accepted standards of proof, as distinguished from the mere admissibility of evidence, are to govern in administrative proceedings as they do in courts of law and equity. The same provision contains two other limitations—first, that the agency must examine and consider the whole of the evidence relevant to any issue and, secondly, that it must decide in accordance with the evidence. Under these provisions the function of an administrative agency is clearly not to decide arbitrarily or to act contrary to the evidence or upon surmise or suspicion or untenable inference. Mere uncorroborated hearsay or rumor does not constitute substantial evidence—see *Edison Co. v. Labor Board* (305 U. S. 197, 230). Under this provision agencies are not authorized to decide in accordance with preconceived ideas or merely to sustain or vindicate prior administrative action, but they must enter upon a bona fide consideration of the record with a view to reaching a just decision upon the whole of it.

RECORD, SECTION 7 (D)

The final subsection of section 7 provides that the record of the evidence taken and the papers filed is exclusive for purposes of decision. It also provides that, where a decision rests in whole or part on official notice of a material fact not appearing in the record, any party must on timely request be given an adequate opportunity to show the true facts.

Both of these provisions are important. The exclusiveness of the record precludes deciding officers from basing their judgments as to the facts upon matters which are not in the record. The provision respecting official notice is essential in order to prevent miscarriages of justice through mistake or by unwarranted expansion of the idea of judicial notice.

DECISIONS, SECTION 8

Section 8 applies only in cases in which other statutes require a hearing and in which section 7 applies as to the conduct of the hearing. Next to the matter of evidence, which I have discussed in connection with section 7 (c), the manner and method in which agencies arrive at decisions have been one of the most criticized parts of the field of administrative law. With respect to this problem the final report of the Attorney General's Committee on Administrative Procedure had the following to say—pages 44-46:

In most of the agencies the person who presides is an adviser with no real power to

decide. * * * He may simply be a monitor at the hearing with power to keep order and supervise the recording of testimony but little or none to make rulings or to play a real part in the final decision of the case. * * * There should be general improvement in administrative procedure at this stage. * * * The committee * * * has been impressed with the fact that as the conduct of the hearing becomes divorced from responsibility for decision two undesirable consequences ensue. The hearing itself degenerates, and the decision becomes anonymous. * * *

If the hearing officer is not to play an important part in the decision of the case, other persons must. The agency heads cannot read the voluminous records and winnow out the essence of them. Consequently this task must be delegated to subordinates. Competent as these anonymous reviewers or memorandum writers may be, their entrance makes for loss of confidence. Parties have a sound desire to make their arguments and present their evidence, not to a monitor, but to the officer who must in the first instance decide or recommend the decision. In many agencies attorneys rarely exercise the privilege of arguing to the hearing officer. They have no opportunity to argue to the record analysts and reviewers who have not heard the evidence but whose summaries may strongly affect the final result.

The provisions of section 8 are designed to make it certain that those who sign decisions or decision papers are actually the people responsible for them, that the evidence and the arguments of the private parties are fully and fairly considered, that the views of agency personnel are not unduly emphasized or secretly submitted, and that the official record alone is the basis of decision.

DECISIONS BY SUBORDINATES, SECTION 8 (A)

Section 8 (a) requires that, in adjudication cases subject to Section 5 (c), the officer or officers who presided at the taking of evidence must either decide the case or recommend a decision—the choice being left to the agency. Since section 5 (c) provides for the separation of functions only in certain cases of adjudications, this provision would not be operative in the excepted cases or in rule making. Its purpose is to make the hearing officer in the covered situations an important factor in the decision process. Where the officer or officers who presided at the hearing are not required to make or participate in the decision under this provision, some other officer or officers who are qualified to preside at hearings must do so. Where such officers make the decision, it becomes the final decision of the agency in the absence of an appeal to or review by the agency. If the agency itself makes the initial decision without having presided at the reception of the evidence, the officers who presided or who are qualified to preside must recommend a decision. Thus the recommended decision, which becomes a part of the record, bridges the gap between the hearing and deciding function in administrative cases. In rule making or determining applications for initial licenses, however, the subsection provides that the agency may issue a tentative decision, any of its responsible officers may recommend a decision, or such procedure may be wholly omitted where the execution of agency functions make it impossible.

SUBMITTALS AND DECISIONS, SECTION 8 (B)

The second subsection of section 8 is a statutory statement of the right of the parties to submit for the full consideration of the presiding officers, first, proposed findings and conclusions or, second, exceptions to recommended decisions or other decisions being appealed or reviewed administratively and, third, supporting reasons for such findings, conclusions, or exceptions. The record must show the official rulings of the agency upon each such finding, conclusion, or exception presented. These provisions assure all parties an opportunity to present their views of the law and the facts and be heard thereon prior to the decision of any case. So that the parties and the reviewing courts may be fully apprised, all recommended or other decisions must include first, findings and conclusions, as well as the reasons or basis therefor, upon all the issues of fact, law, or discretion presented by the record and, second, the appropriate agency action or denial.

The purpose and effect of these provisions are clear upon the face of the section. One matter should be emphasized. Section 8 (b) requires findings and conclusions to be stated upon all the material issues of fact which the parties may present. This means that, within the legal framework of the type of case involved, the number and the subjects of the findings and conclusions will be determined by the record and by the legal, factual, or discretion issues raised by the parties. The mere parroting of findings or conclusions in the words of statutes, however sufficient that may be as an ultimate conclusion, definitely would not satisfy in any manner the requirements of this section unless both the statute and the issue were very narrow indeed. Almost any case of consequence involves numerous and detailed issues of law, fact, and discretion. These must all be determined as a part of the decision. Only in that manner are the parties protected and assured that the case has been fully and completely considered and determined.

SANCTIONS AND POWERS, SECTION 9

Section 9, relating to agency sanctions and powers, applies in all cases, whether or not a statutory hearing is required. It does not dispense with hearings otherwise required, nor does it supply them if not so required. It deals with the large and troublesome problem of the remedies or redress which administrative agencies are entitled to undertake or grant.

GENERAL LIMITATIONS, SECTION 9 (A)

The first and principal provision of the section simply requires that no sanction shall be imposed or substantive rule or order be issued except within jurisdiction delegated to the agency and as authorized by law. This provision is framed on the necessary assumption that the detailed specification of powers must be left to other legislation relating to specific agencies. Its effect is to confine agencies to the jurisdiction and powers so conferred. That means not only the legal but the factual jurisdiction of an agency, and the legal and factual ap-

propriateness of any sanction or relief it may assume to impose or grant. The basic premise of the section, if I may repeat, is that agencies are not authorized to invent sanctions or relief or to attempt to apply or grant them beyond the limitations of authority within which they operate.

LICENSES, SECTION 9 (B)

Section 9(b) deals with licensing. It requires agencies to determine promptly all applications for licenses, prohibits them from withdrawing a license without first giving the licensee notice and an opportunity to achieve compliance except in cases of obvious willfulness or emergency, and in businesses of a continuing nature precludes any license from expiring until timely applications for new licenses or renewals have been determined.

These special provisions are necessary because of the very severe consequences of the conferring of licensing authority upon administrative agencies. The burden is upon private parties to apply for licenses or renewals. If agencies are dilatory in either kind of application, parties are subjected to irreparable injuries unless safeguards are provided. The purpose of this section is to remove the threat of disastrous, arbitrary, and irremediable administrative action.

JUDICIAL REVIEW, SECTION 10

Section 10 is a comprehensive statement of the right, mechanics, and scope of judicial review. It requires an effective, just, and complete determination of every case and every relevant issue. It is a means of enforcing all forms of law and all types of legal limitations. Every form of statutory right or limitation would thus be subject to judicial review under the bill. It would not be limited to constitutional rights or limitations alone—see *Perkins v. Lukens Steel Co.* (310 U. S. 113).

Two general exceptions are made in the introductory clause of section 10. The first exempts all matters so far as statutes preclude judicial review. Congress has rarely done so. Legislative intent to forbid judicial review must be, if not specific and in terms, at least clear, convincing, and unmistakable under this bill. The mere fact that Congress has not expressly provided for judicial review would be completely immaterial—see *Stark v. Wickard* (321 U. S. 288 at p. 317).

The second general limitation on the section is that there are exempted matters to the extent that they are by law committed to the absolute discretion of administrative agencies. There have been much misunderstanding and confusion of terms respecting the discretion of agencies. They do not have authority in any case to act blindly or arbitrarily. They may not willfully act or refuse to act. Although like trial courts they may determine facts in the first instance and determine conflicting evidence, they cannot act in disregard of or contrary to the evidence or without evidence. They may not take affirmative or negative action without the factual basis required by the laws under which they are proceeding. Of course, they may not proceed in disregard to the Con-

stitution, statutes, or other limitations recognized by law.

RIGHT OF REVIEW, SECTION 10 (A)

The first subsection of section 10 provides that any person suffering legal wrong because of any agency action, or adversely affected within the meaning of any statute, is entitled to judicial review. Legal wrong means action or inaction in violation of the law or the facts. The categories of questions of legal wrong are set forth later as subsection (e) of section 10.

FORMS OF REVIEW ACTIONS, SECTION 10 (B)

Under this bill the technical form of proceeding for judicial review is, first, any special proceeding which Congress has provided or, in the absence or inadequacy thereof, any relevant form of action such as those for declaratory judgments or injunctions in any court of competent jurisdiction. In addition, any agency action is also subject to judicial review in any civil or criminal enforcement proceeding except to the extent that prior, adequate, and exclusive opportunity for such review is otherwise provided by law.

These provisions summarize the situation as it is now generally understood. The section does not disturb special proceedings which Congress has provided, nor does it disturb the venue arrangements under existing law. It does, however, constitute a statutory adoption of traditional forms of action in cases where Congress has made no contrary provision for judicial review.

REVIEWABLE ACTS, SECTION 10 (C)

In any proceeding for judicial review, the parties who seek it must specify what it is they wish reviewed and what it is they claim to be reviewable. Accordingly, section 10 (c) provides that specific acts which are either expressly made reviewable by legislation or for which there is no other adequate judicial remedy are subject to review under section 10 of this bill. Preliminary or procedural matters not so reviewable may be reviewed in connection with final actions. An act is final whether or not there has been presented or determined an application for any form of reconsideration, unless statutes otherwise expressly require.

The provisions of this section are technical but involve no departure from the usual and well understood rules of procedure in this field.

TEMPORARY RELIEF, SECTION 10 (D)

Of importance in the field of judicial review is the authority of courts to grant temporary relief pending final decision of the merits of a judicial-review action. Accordingly section 10 (d) provides that any agency may itself postpone the effective date of its action pending judicial review or, upon conditions and as may be necessary to prevent irreparable injury, reviewing courts may postpone the effective date of contested action or preserve the status quo pending conclusion of judicial-review proceedings.

The section is a definite statutory statement and extension of rights pending judicial review. It thus, so far as necessary, amends statutes conferring exclusive authority upon administrative

agencies to take or withhold action. Its operation will involve no radical departures from what has generally been regarded as an essential and inherent right of the courts; but, however that may be, this provision confers full authority to courts to protect the review process and purpose otherwise expressed in section 10.

SCOPE OF REVIEW, SECTION 10 (E)

The final subsection of section 10 states the extent or degree of review which courts are required to afford under this bill. I have already referred to the exemption of situations in which Congress has specifically withheld review or in which action has by law been committed to the absolute discretion of administrative agencies.

Subsection (e) of section 10 requires courts to determine independently all relevant questions of law, including the interpretation of constitutional or statutory provisions and the determination of the meaning or applicability of any agency action. They must compel action unlawfully withheld or unreasonably delayed. They must hold unlawful any action, findings, or conclusions which they find to be, first, arbitrary or in abuse of discretion; second, contrary to any provision of the Constitution; third, in violation of statutes or statutory rights; fourth, without observance of procedure required by law; fifth, unsupported by substantial evidence in any case reviewed upon the record of an agency hearing provided by statute; or, sixth, unwarranted by the facts so far as the latter are subject to trial de novo. In making these determinations the court is to consider the whole record or such parts as any party may cite and, where error has been fully cured prior to the effective date of agency action, the courts may apply the rule respecting nonprejudicial error.

The term "substantial evidence" as used in this bill means evidence which on the whole record as reviewed by the court and in the exercise of the independent judgment of the reviewing court is material to the issues, clearly substantial, and plainly sufficient to support a finding or conclusion affirmative or negative in form under the requirements of section 7 (c) heretofore discussed. Under this section the function of the courts is not merely to search the record to see whether it is barren of any evidence, or lacking any vestige of reliable and probative evidence, or supports the agency action by a scintilla or my mere hearsay, rumor, suspicion, speculation, and inference—cf. *Edison Co. v. Labor Board* (305 U. S. 197, 229–230). Under this bill it will not be sufficient for the court to find, as the late Chief Justice Stone pointed out within the year, merely that there is some "tenuous support of evidence"—*Bridges v. Wixon*, (326 U. S. at 178). Nor may the bill be construed as permitting courts to accept the judgments of agencies upon unbelievable or incredible evidence.

Where there is no statutory administrative hearing to which review is confined, the facts pertinent to any relevant question of law must of course be tried and determined de novo by the reviewing court.

Whether a court is proceeding upon an administrative or a judicial record, the requirement of review upon the whole record means that courts may not look only to the case presented by one of the parties but must decide upon all of the proofs submitted.

EXAMINERS, SECTION 11

One of the most controversial proposals in the field of administrative law relates to the status and independence of examiners who hear cases where agencies themselves or members of boards cannot do so. I have heretofore referred to this problem in my discussion of section 8 respecting decisions. Both sections 7 and 8 authorize the use of examiners. Section 11, which I am about to discuss, provides for their selection, tenure, and compensation.

It is often proposed that examiners should be entirely independent of agencies, even to the extent of being separately appointed, housed, and supervised. At the other extreme there is a demand that examiners be selected from agency employees and function merely as clerks. In framing this bill we have rejected the latter view, as the Attorney General's committee on administrative procedure throughout the greater part of its final report rejected it, and have made somewhat different provision for independence. Section 11 recognizes that agencies have a proper part to play in the selection of examiners in order to secure personnel of the requisite qualifications. However, once selected, under this bill the examiners are made independent in tenure and compensation by utilizing and strengthening the existing machinery of the Civil Service Commission.

Accordingly, section 11 requires agencies to appoint the necessary examiners under the civil service and other laws not inconsistent with the bill. But they are removable only for good cause determined by the Civil Service Commission after a hearing, upon the record thereof, and subject to judicial review. Moreover, their compensation is to be prescribed and adjusted only by the Civil Service Commission acting upon its independent judgment. The Commission is given the necessary powers to operate under this section, and it may authorize agencies to borrow examiners from one another.

If there be any criticism of the operation of the civil-service system, it is that the tenure security of civil service personnel is exaggerated. However, it is precisely that full and complete tenure security which is widely sought for subordinate administrative hearing and deciding officers. Section 11 thus makes use of past experience and existing machinery for the purpose.

CONSTRUCTION AND EFFECT, SECTION 12

The final section of the bill provides that nothing in it is to diminish constitutional or other legal rights, that requirements of evidence and procedure are to apply equally to agencies and private persons, that the unconstitutionality of any portion or application of the bill shall be subject to the usual saving provision, and that subsequent legislation is not to be deemed to modify the bill except as it may do so expressly.

The final sentence provides that the bill shall become law 3 months after its approval, except that sections 7 and 8 respecting statutory hearings and decisions shall not take effect until 6 months after its approval, the requirements of section 11 respecting the selection of examiners are not to become effective for a year, and no requirement of the bill is mandatory as to any agency proceeding initiated prior to the effective date of such requirement.

The staggered effective date provision has been thought necessary in order to give administrative agencies every opportunity to prepare fully.

V. CONCLUSION

This measure is the culmination of long and earnest consideration. It responds to a widespread, deep-seated, and insistent public demand for some attention to the problem of administrative justice and administrative operations. It has been drafted with the greatest of care and upon fulsome consideration of views from every side. It is not, of course, the final word, but it is a good beginning.

(Mr. WALTER asked and was given permission to revise and extend his remarks.)

Mr. HANCOCK. Mr. Chairman, I yield myself 5 minutes.

Mr. Chairman, the two gentlemen who are best able to answer your questions and describe the bill are the gentleman from Pennsylvania [Mr. WALTER], chairman of the subcommittee which has studied this bill for years and brings it to us today, and the ranking minority member on that committee, the gentleman from Iowa [Mr. GWYNNE]. As far as I know, there is no opposition to the bill on this side of the aisle, although there are many of us who would like to have it stronger. Nevertheless, I think we are all prepared to go along with it because we feel it is the first important step in the direction of dividing investigatory, regulatory, administrative, and judicial functions in Government agencies.

I have long favored reform of administrative procedure, legislation which would protect individual citizens against the abuses of delegated power, legislation which would separate the functions of investigator, prosecutor, judge, jury, and executioner. This problem has received a considerable amount of study over the last 10 years. The members of the Judiciary Committees of the House and of the Senate have given it a great deal of time and attention and extensive hearings have been held. The bar associations of the country, the Department of Justice, and prominent lawyers everywhere have studied it and recommended remedial legislation since 1935. Many bills have been introduced to accomplish this purpose, and at least one was passed, the Walter-Logan bill, 6 or 7 years ago. It was vetoed by President Roosevelt on the ground that further study was required. This legislation has received further study and the bill before us is the result of it. No one claims it is a perfect bill. If weaknesses develop, as they may with experience, the Congress can pass legislation to correct

those weaknesses. I hope the bill will be passed as presented by the Judiciary Committee. It has already been passed by the Senate and it has the endorsement of the Attorney General, which is assurance that it will be signed by the President.

Just let me say this, which has already been mentioned: I regard the report which accompanies this bill as the most complete and scholarly report that has ever accompanied any bill to come before us in my time. It is a valuable legal document, and I advise you to retain it in your files for future reference.

No one has been more active in seeking to correct injustices of administrative law and procedure than the able gentleman from Pennsylvania [Mr. WALTER]. It now appears that his efforts of many years will culminate in success today, and I congratulate him.

Mr. Chairman, I yield 10 minutes to the gentleman from Iowa [Mr. GWYNNE].

Mr. GWYNNE of Iowa. Mr. Chairman, I have often thought that private monopolies and Government bureaucracies can not exist long in a country and have the country remain free. The purpose of this bill is to make a start at least along the road that we must travel to regulate the many bureaus and tribunals that are now operating in the executive branch of the Government.

Some of you who have been very much interested in this subject over the years may read this bill with a certain amount of disappointment. You will regret that the bill does not go farther. I am frank to say that I have those same feelings myself. Nevertheless, I should like to point this out to the membership, this bill has been passed by the Senate. If it is passed in the House with the amendments the House committee has recommended it will undoubtedly become the law. It will become the much needed start along the road I am so anxious to have us travel. I hope therefore we will pass this bill unanimously and without amendment.

Furthermore, as has been pointed out by the gentleman from Texas [Mr. SUMNERS], the chairman of the committee, we are legislating in a new field. I think it is the part of wisdom not to go as far perhaps as some of us would like, but to go carefully, note mistakes and profit by them.

All I intend to do, Mr. Chairman, is to make a rather brief statement of what is in the bill.

Mr. GRANGER. Mr. Chairman, will the gentleman yield?

Mr. GWYNNE of Iowa. I yield.

Mr. GRANGER. There are a number of us in Congress, of course, who are not lawyers. This bill I suppose is fully understood by those who are members of the legal profession. As I understood the purpose of the bill—I was somewhat confused by the gentleman's statement that it was to regulate bureaus—my impression was that it was simply a bill to make uniform rules promulgated by the bureaus and practice before the various boards and commissions of the country. Is not that generally what it is supposed to do?

Mr. GWYNNE of Iowa. No; I would not say that was all of it. It does not as a matter of fact make uniform practice before bureaus and tribunals. It requires these agencies of Government in their practice to maintain certain minimum standards. It is an attempt to bring in to the practice of these bureaus and tribunals those principles of due process that we understand and that are being enforced in the courts. If I may proceed for a few minutes I believe I will make these things clear as I go along. I really wish to touch the bill a little. I will yield later if I have time.

After a law has been passed by the Congress, before it applies to the individual citizen there are about three steps that must be taken. First, the bureau having charge of enforcement must write rules and regulations to amplify, interpret, or expand the statute that we passed; rule making, we call it. Second, there must be some procedure whereby the individual citizen who has some contact with the law can be brought before the Bureau and his case adjudicated. You might refer to that as adjudication or hearing. Finally, there must be some procedure whereby the individual may appeal to the courts from the action taken by the Bureau. This bill briefly touches all three.

In the matter of rule making the bill provides, for instance, this in substance: It requires the agency to give notice of its intention to make rules and regulations. It requires the agency to allow interested parties to appear and state their views and request that certain rules and regulations be adopted. That would be much like the hearings that we now have before our committees in the House. Incidentally, that practice is now being followed by certain agencies of the Government. Then it requires that these rules or regulations which have the effect of law must be published in the Federal Register and go into effect at some future date. That is stating it very briefly but that is the substance of what is required on the important subject of rule making.

Then we come to the question of adjudication. How is an individual who violates, or let us say who wishes some action under, these rules and regulations, how is his case to be disposed of? On that point I think there is some difference between the present bill and the Walter Logan bill. This bill is not as definite in its requirements. It lays down certain minimum standards which must be observed by the Bureau or tribunal.

The bill provides that the agency must give notice to the individual of the hearing, also of the time and place, much the same as notice is given now in civil suits. The person affected may appear by lawyer or by some one who is not a lawyer, if that practice is allowed in that particular agency. Hearings may be had before the agency sitting together or by any member or members of the agency or, finally, by hearing examiners, which is probably usually the case.

The trial proceeds much after the fashion of a hearing before industrial

commissions or boards who have charge of the administration of the workmen's compensation in various States. The rules of evidence are not restricted to those matters of competency that we enforce in court; nevertheless an attempt is made in the bill to require the presiding judge, so to speak, to confine the case at issue to relevant and probative testimony.

An important feature of the bill in this connection has to do with the appointment of examiners and there is a provision to keep the deciding functions separate and distinct from the prosecution part of it. Great complaint has been made that agencies send out people to prosecute the individual and, from the same office and subject to the same direction, they send out the hearing examiner who is to hear the case. This provides for separation of these functions and prohibits one from meddling with the other.

It also provides that these hearing examiners shall be appointed by the agency in accordance with civil-service rules. The salaries of the examiners are fixed by the Civil Service Commission and promotions and increases in salaries are also fixed by that Commission.

It is hoped to at least make a start, although I think it does not go as far as it should, in arriving eventually at a complete separation between the deciding functions and the prosecuting functions.

The only other and remaining feature I would like to mention has to do with appeals, then I shall be glad to yield. The great difficulty with our present set-up is that many of these bureaus are not subject to court review and many of them even if we pass this bill will still not be subject to court review. This bill does not give a court review in any case where review is now precluded by statute. It simply clarifies and expands in some particulars the authority of the court in reviewing cases which they now have the authority to review. In general they can reverse or modify the judgment on these grounds:

First. If the finding is contrary to some provision of the Constitution;

Second. If the tribunal or agency has failed to follow the procedure provided by law;

Third. If the decision is arbitrary or capricious; and

Finally, and very important, if the finding of the agency is not supported by substantial evidence.

Mr. Chairman, a lot can be said about this bill, but I will not proceed any further because I want to yield.

The CHAIRMAN. The time of the gentleman from Iowa has expired.

Mr. HANCOCK. Mr. Chairman, I yield the gentleman three more minutes.

Mr. MURDOCK. Mr. Chairman, will the gentleman yield?

Mr. GWYNNE of Iowa. I yield to the gentleman from Arizona.

Mr. MURDOCK. I want to say to the gentleman that I have received numerous communications from bar associations and legal authorities in my State

supporting this bill and calling on me to support it. Not being a lawyer, I am glad to have the gentleman's clear-cut statement. However, in addition to that, what I would like to know is this: Has the machinery set up been such as to cause delay in the working out of justice for the citizen in review procedure and that sort of thing?

Mr. GWYNNE of Iowa. Does the gentleman mean the present procedure?

Mr. MURDOCK. No; I am inquiring about the machinery set up in this bill.

Mr. GWYNNE of Iowa. Oh, I would say not. I would say it certainly should not cause delay. It should expedite proceedings, if anything.

Mr. VOORHIS of California. Mr. Chairman, will the gentleman yield?

Mr. GWYNNE of Iowa. I yield to the gentleman from California.

Mr. VOORHIS of California. On the matter of court review, I wanted to ask the gentleman whether the bill will or will not make a change in the situation which now pertains as to certain agencies where, if the position of that agency is supported by any degree of reasonable evidence, the court must not go beyond that decision? Does not the bill give the court somewhat broader powers from that point of view than it would have otherwise?

Mr. GWYNNE of Iowa. Right.

Mr. VOORHIS of California. Would the gentleman expand on that a little bit? I think it is very important.

Mr. GWYNNE of Iowa. I might say rather briefly that there are two conflicting theories that have often been expounded by the courts. One is that if the verdict of the jury or if the finding of the triers of fact is sustained by a scintilla of evidence, any evidence, no matter how lacking in probative force, the court must sustain it. The other is that the court need not sustain a finding unless it is supported by substantial evidence. The latter is the view adopted in this bill.

Mr. VOORHIS of California. That is a change from the practice that is now in effect in regard to some agencies, is it not?

Mr. GWYNNE of Iowa. That is correct.

Mr. SPRINGER. Mr. Chairman, will the gentleman yield?

Mr. GWYNNE of Iowa. I yield to the gentleman from Indiana.

Mr. SPRINGER. On the question which has just been raised by the gentleman from California, there have followed, in the procedure under the present rules, findings even where the evidence was not competent; where there was no evidence at all. The finding might be made without regard to whether or not that evidence was actually competent to get into the case; is that not correct?

Mr. GWYNNE of Iowa. That happens under the present set-up, yes, unfortunately.

Mr. VOORHIS of California. But it can happen under the bill?

Mr. GWYNNE of Iowa. This bill does not concern itself with competent evidence particularly, but it does give to the court the duty to set aside findings

if not supported by substantial evidence.

The CHAIRMAN. The time of the gentleman from Iowa has expired.

Mr. HANCOCK. Mr. Chairman, I yield 10 minutes to the gentleman from Indiana [Mr. SPRINGER].

Mr. SPRINGER. Mr. Chairman, as has been stated during this debate, this measure which is now pending before the House is a very important measure as it appeals to me. I might state that this bill, S. 7, was passed on March 12, 1946, by the Senate and it then came to the House and it has been given very careful consideration since that time.

May I say that the distinguished gentleman from Pennsylvania [Mr. WALTER], together with the ranking minority Member the gentleman from Iowa [Mr. GWYNNE], have given much attention and have spent much time on this particular legislation. I wish to compliment each of those gentlemen for the fine service they have rendered to the country and to the people in the presentation of this measure. The Attorney General is in favor of this bill.

I want to refer to the report, page 15, and quote from a letter of the Attorney General. In the closing portion of the letter this is what he has to say on that subject:

The bill appears to offer a hopeful prospect of achieving reasonable uniformity and fairness in administrative procedures without at the same time interfering unduly with the efficient and economical operation of the Government. Insofar as possible, the bill recognizes the needs of individual agencies by appropriate exemption of certain of their functions.

After reviewing the committee print, therefore, I have concluded that this Department should recommend its enactment.

That is the statement of Attorney General Clark on this particular subject.

The gentleman from Iowa [Mr. GWYNNE] has gone rather carefully over the provisions of the bill. I desire to call attention to only one, and that is the fourth provision, relating to the question of reviewable acts, the review of the proceedings by the judiciary, and the scope of the review. Under the present procedure, in many cases where there is any evidence, even a scintilla of evidence, decisions have been rendered and predicated on that character of evidence before the hearing tribunal.

Mr. HANCOCK. Even though contrary to the preponderance of the evidence.

Mr. SPRINGER. Yes, as the distinguished gentleman from New York says, that has been done in many cases even though it is contrary to the preponderance of the evidence introduced at the hearing.

May I say further on this particular point that in many instances the evidence upon which a decision has been predicated has not been competent evidence.

The bill pending before this committee, and which I hope will be passed without a dissenting vote, provides for judicial review in certain instances, and it takes up the scope of the review. It is to that particular feature that I desire to

address the few comments I have to make upon this measure.

Page 39 of the bill provides that under this law the reviewing courts "shall compel agency action unlawfully withheld or unreasonably delayed."

In many of those cases there has been a withholding or a long delay, and that particular feature is intended to hasten action on the part of these agencies. I feel confident each Member will approve that provision in this bill.

The second provision, to which I now refer, provides "and hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

To my mind, that is a most potent statement and is a fair and equitable provision of the bill.

Mr. SCRIVNER. Mr. Chairman, will the gentleman yield?

Mr. SPRINGER. I am happy to yield to my friend from Kansas.

Mr. SCRIVNER. Does the gentleman feel that that would correct the evils that might exist where a regulation was contrary to the intent, spirit, or purpose of the act?

Mr. SPRINGER. I think, unquestionably, it would. The gentleman is precisely correct. That is the purpose and that is the intention of that provision which has been written into this bill. In those cases where these decisions are found to be arbitrary, where the decision is found to be capricious or an abuse of discretion or otherwise not in accordance with the law, the decision can be set aside. That is certainly fair, that is certainly equitable, and that is certainly based upon a sound philosophy.

The next provision under the scope of review to which I desire to call the attention of the Members is that any decision can be set aside which is contrary to constitutional right, power, privilege, or immunity. There is no one in the world who could object to a provision of that kind because that is based upon the sound philosophy of the law.

The following provision in the scope of review that I desire to call to the attention of the Members is that in cases "where the decision is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," such decision can be set aside. In other words, where the person who has been tried has had taken away from him the legal rights to which he is entitled; or the limitation to which he is entitled under the provisions of the law have been reduced, then that character of decision under the scope provided in this bill can be set aside.

Fourth. "Without observance of procedure required by law." That is a potent and powerful reason. Decisions thus can be set aside where there is no observance of the legal procedure on the part of the hearing administrator or agent. When that authority has been taken into his hands and he has failed to observe the legal requirements and procedures, then such a decision, predicated upon that theory, can be set aside.

Fifth. "A decision which is unsupported by substantial evidence" can be set aside. I mentioned just a little while ago that many cases in which decisions have been rendered upon a mere scintilla of evidence, and not on the weight of the evidence, have been discovered. In many instances the decisions have been based upon evidence which is not competent. But under the provisions of this bill it is required that all such decisions shall be based upon and predicated upon substantial evidence. That is the only fair basis upon which decisions of this character should be made by either a court or any agency assuming the authority to hear and determine cases.

The sixth provision applies to decisions unwarranted by the facts to the extent that the facts are subject to a trial de novo by the reviewing court. It is my judgment that under the scope of review set forth in the pending bill it will give every person the opportunity and right to have a fair, just, and impartial trial in the judicial proceeding, and a complete review of the case which has been conducted against him. I hope this bill is passed without any objection. This worth-while legislation has been too long delayed already, and it is my hope that it will be passed in the House, fully approved by the other body, and promptly signed by the President.

The CHAIRMAN. The time of the gentleman from Indiana has expired.

Mr. SUMNERS of Texas. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. DOYLE].

(Mr. DOYLE asked and was given permission to revise and extend his remarks.)

ADMINISTRATION OF JUSTICE IMPROVED AND PUBLIC RESULTINGLY BENEFITED BY DILIGENT CONTINUOUS WORK OF THE BUILDERS OF THE BILL S. 7

Mr. DOYLE. Mr. Chairman, first I wish very cordially and sincerely to compliment the Judiciary Committee, as well as the distinguished chairman of the subcommittee of the Judiciary on this very appropriate and significant bill. It is refreshing to come here to the national level from my native State of California and find that some of the worthy objectives for which I had the pleasure of working for several years there, as member of the Long Beach, Calif., and American Bar Associations, and as a member of the board of bar delegates of that great State, now about to be passed unanimously, I hope, by this great national legislative body.

Just several months ago, when the distinguished and able lawyer, Harry J. McClain, immediate past president of the Los Angeles Bar Association, was here in Washington in conference on the very objectives of this bill, I had the pleasure of sitting at dinner with him and listening to his discussion and learning from him. He and I and my wife were schoolmates at Long Beach, Calif. So, I naturally continue to have a great deal of confidence in his ability as well as his forthrightness in this matter of great importance. Besides, I know that for years he has searchingly labored to find a constructive plan such as this bill.

The report of the committee is so inclusive in its discussion of the subject

matter and the diagram synopsis on pages 28 and 29 so clearly portray some of the most pertinent visions, and the debate here today is so conclusively in favor of the bill that I hope there will be a unanimous vote for it.

For more than 10 years this legislation has had careful consideration and we have just heard the distinguished Member from Michigan, on the minority side, state in substance that he has never known, in his long service in this House, of a measure having had more painstaking or careful study. Once again we find that the report in this case shows the far-seeing and rich vision of former President Franklin Delano Roosevelt. For the report, on page 7, thereof, specifically sets forth that he sent legislative recommendations to Congress many years ago in this very field.

I will not at this time take longer of the time of the House because members of the Judiciary Committee have done a very fine job of explaining this and I do compliment them on the work they have done.

Manifestly the vision of the needs of the objectives of this bill and the hard, continuous work over a term of almost a dozen years of the American Bar Association, the various State bar associations and the committees of Congress, and the departments of Government, should have the sincere appreciation at this time, of all of us, gentlemen.

The CHAIRMAN. The time of the gentleman from California [Mr. DOYLE] has expired.

Mr. HANCOCK. Mr. Chairman, I yield 5 minutes to the gentleman from Iowa [Mr. DOLLIVER].

(Mr. DOLLIVER asked and was given permission to revise and extend his remarks.)

Mr. DOLLIVER. Mr. Chairman, during the period of time since the close of the First World War, there has been a tremendous expansion of the number of agencies, administrative bodies, and commissions of the United States Government. In fact, to those of us who were engaged in the practice of law during that period, it had come to the point where a great deal of our time was taken up in dealing with those various agencies of the Federal Government. They were spawned with great speed and without too much consideration, it seemed to the practicing lawyer, over this period of time, with a great variety of powers. Some of those powers directly affected the daily lives of every individual in the United States of America.

It necessarily followed, I suppose, since so many of them were created, that each of them would develop its own variety of procedure—that each of them would have its own method of doing business. Accordingly the problem that confronted the citizen who overstepped the bounds of the rules of some agency was to discover how to alleviate the situation. It was more complex because there were no uniform rules of procedure, and a person had to delve into the intricacies of each agency or each commission in order to find out what to do.

This bill is certainly a step in the right direction. It attempts to give some uni-

formity of procedure. It attempts to direct these agencies and commissions and departments to use forms that can be understood which shall be uniform through all of them.

Not only does it promote uniformity but it codifies the procedures in a court review. This part of the bill has just been explained by my colleague the gentleman from Indiana [Mr. SPRINGER]. Because of the necessity of passing the bill, how great have been the abuses in some of the agencies concerned.

Personally, I think perhaps this bill does not go far enough in that direction. I believe I should welcome the opportunity to vote for a bill that would curtail the exclusions with respect to judicial review that are here contained.

Mr. WALTER. Mr. Chairman, will the gentleman yield?

Mr. DOLLIVER. I yield.

Mr. WALTER. I would like to call the gentleman's attention to the fact that there is no exclusion whatsoever. The decision of an agency created by statute that prohibits a review is the only one excluded. We are anticipating the possibility that some time or other such an agency will be erected.

Mr. DOLLIVER. I was referring to exactly the point that the gentleman has raised, that there are certain statutory exclusions now existing which are not covered by this bill. Perhaps there is just one such agency and I believe the gentleman and I understand which one that is. I still say I would welcome an opportunity to consider legislation which would include that excluded agency.

In connection with this bill I am very glad to present to the Congress a portion of a letter I have just received from Mr. Burt J. Thompson, of Forest City, Iowa, former president of the Iowa State Bar Association.

Mr. Thompson says in part:

This bill has been before the board of governors of the Iowa State Bar Association, and has received its approval. I think it is a fair statement also to say that it meets with the approval of the lawyers generally throughout the State of Iowa.

Mr. Thompson is a member of the special committee of the American Bar Association which has been studying this problem of administrative procedure for many, many years. I am glad to see that he is so fully in favor of the passage of this bill. While it does not, as I have just suggested, go as far perhaps as he and others may desire, nevertheless, it is a step in the right direction. We have great confidence that the bill will be passed.

The CHAIRMAN. The time of the gentleman from Iowa has expired.

Mr. SUMNERS of Texas. Mr. Chairman, I yield 5 minutes to the gentleman from Alabama [Mr. HOBBS].

Mr. HOBBS. Mr. Chairman—

Mr. KEEFE. Mr. Chairman, will the gentleman yield?

Mr. HOBBS. I shall be so delighted to yield to the distinguished gentleman from Wisconsin.

Mr. KEEFE. I merely wish to say to the distinguished gentleman who is about to address the House and to the other members of the committee that I regret that I am compelled to attend a very

important meeting of a subcommittee of the Appropriations Committee and must be there this afternoon. I do want the RECORD to show at this point, however, that this matter contained in this bill is one in which I have been interested ever since I first came to Congress in 1939.

I congratulate the author and the Judiciary Committee in finally bringing this bill to the House. I trust it will go back to the other body and result in final action in a field that is so very much needed in this country.

Mr. HOBBS. We thank the gentleman for that contribution, although for us who know him so well and his outstanding ability in the field of law it was entirely unnecessary. We know he has been profoundly interested all the time, is now, and that but for conflicting engagements he would be with us as we work out this piece of legislation on the anvil of public discussion on the floor of the House.

I simply wish to adopt what he has said. There is no need of reiteration, and that is what may be now fast approaching in this debate. There is no need to discuss or argue the merits of this piece of legislation. So I wish in the few minutes allotted to me merely to make a few long-overdue observations as to some credit that is too apt to be overlooked.

Mr. MURDOCK. Mr. Chairman, will the gentleman yield for a question before he goes into that?

Mr. HOBBS. I am delighted to yield to the distinguished gentleman from Arizona, always.

Mr. MURDOCK. I am not a lawyer, as the gentleman knows. I am just asking the gentleman whether the bill enacted into law will bring about a government of law rather than of men? Is that the ideal toward which this bill looks?

Mr. HOBBS. The gentleman has phrased it very aptly. It is the ideal toward which this legislation looks and moves. Whether or not it will be realized depends upon the construction which may be placed upon it by the trial and appellate courts of this land. We hope and pray that they will so construe this act as to emphasize its plain mandate and achieve that ideal.

Not only do I wish to compliment the distinguished gentleman from Pennsylvania, Hon. FRANCIS WALTER, who is the author of the report and who has done so much in the drafting of this act through the years he has worked, but I also wish to echo the congratulations that have been showered on the gentleman from Iowa, Hon. JOHN GWYNNE, and his associates on the subcommittee. Our late great President, Franklin D. Roosevelt, in 1939, acting in accordance with the recommendation of the Honorable Homer Cummings, Attorney General of the United States, recommended the appointment of a committee to study the problem this bill seeks to solve. I wish also to compliment each of the successors of Attorney General Cummings in that high office, and particularly speak with approval of the work of the present Attorney General, Hon. Tom C. Clark.

The CHAIRMAN. The time of the gentleman from Alabama has expired.

Mr. SUMNERS of Texas. Mr. Chairman, I yield the gentleman five additional minutes.

Mr. HOBBS. Mr. Chairman, I would be unworthy of the occasion, however, if I did not pay tribute to the work of the American Bar Association in this connection, particularly the leadership of that body and its great special committee. We all know that Hon. Carl McFarland has been one of the outstanding leading spirits in the movement which is now resulting in the enactment of this bill. We should also gratefully praise the administration of the Honorable George Maurice Morris, who during the time he headed that organization, as his successors have done in emulation of his example since his day, made it possible for us to bring to you today the well-reasoned, carefully drawn bill which is so soon to become law.

Mr. HANCOCK. Mr. Chairman, will the gentleman yield?

Mr. HOBBS. I am always delighted to yield to the gentleman from New York.

Mr. HANCOCK. May I add the name of a former very active supporter of this measure, a former president of the American Bar Association, Arthur P. Vanderbilt.

Mr. HOBBS. Not only that, sir, but in line with the gentleman's usual quick thinking, he simply beat me to the punch. I am delighted to make acknowledgment not only to Hon. Arthur Vanderbilt but to a long line of other men who have aided in their high office.

Mr. Chairman, this is all I really care to say today. It seems to me that the Constitution of the United States, has divided the powers of our Government into three coordinate branches, the legislative, executive, and judicial. These have been swallowed up by some administrators and their staffs who apparently believed that they were omnipotent. These have exercised all of the powers of government, arrogating to themselves more power than ever belonged to any man, or group. This has made necessary the enactment of some such legislation as is now in process of passage.

We hope and pray that the plain meaning of this law will be so correctly interpreted as to effectuate its high purpose. Therefore we thank every Member of the House in advance for the unanimous support that this bill deserves and will receive.

(Mr. HOBBS asked and was given permission to revise and extend his remarks.)

Mr. HANCOCK. Mr. Chairman, I yield 5 minutes to the gentleman from Kentucky [Mr. ROBSON].

Mr. ROBSON of Kentucky. Mr. Chairman, I arise in support of Senate bill 7 which proposes "to improve the administration of justice by prescribing fair administrative procedure." This bill passed the Senate some time ago, came to the House and referred to the Committee on the Judiciary of the House which committee, after careful consideration, amended the Senate bill and which, in

my opinion, improves the Senate bill in line with the purposes of the bill.

I am not a member of the subcommittee of the Judiciary Committee that held the hearings and considered this bill. I understand that the subcommittee approved it by unanimous vote. It then came to our full committee and as I recall there was no serious opposition to the bill in our full committee. Mr. WALTERS of Pennsylvania is the chairman and Mr. GWYNNE of Iowa is the ranking Republican of that subcommittee. They have both made splendid speeches in explaining the provisions and purposes of this legislation. The time for general debate is more or less limited. I am sure that those who are not members of our Judiciary Committee will find the report on this bill most enlightening and I urge each one of you to read the report carefully.

This legislation is very necessary and it is long overdue. It is not as comprehensive as it should be. It certainly is a step in the right direction and as time goes on no doubt it will be perfected by appropriate amendments. Many of our leading jurists, statesmen, including former Chief Justice Hughes, many distinguished lawyers and judges, the American Bar Association, business people, and other citizens have strongly commended and urged legislation for the purposes set forth in this bill. Years ago we had only a small number of Federal bureaus, agencies, and commissions, and a comparatively small number of Federal offices but as the country has grown and as its activities have become more diversified and complex it has been necessary for the Congress to pass laws delegating to various agencies their administration. Congress could not spell out in precise words the administrative powers and duties of these agencies. It could only do so in general terms and it was up to these agencies to issue appropriate rules in carrying out their administrative duties within the purpose and intent of the Congress as expressed in the laws enacted by Congress. This type of legislation and the delegation of powers have increased from year to year so that it now involves many, many agencies and many, many officers. There is no doubt in my mind but what we have too many agencies and too many officers. The Federal officials now, outside of our armed forces, in this and foreign countries number approximately 3,000,000. In the last 10 or 15 years these Federal agencies and the number of officials have grown by leaps and bounds, and the naked fact is that we do have these agencies and officials administering hundreds of acts of Congress and in so doing they have issued orders, directives, and rules exceeding the powers granted to them by the Congress. In other words, they have assumed the function of making laws. The power to legislate and make laws rests alone in the Congress and not within the powers of any officer of any one of these agencies.

These same officers of these agencies issue these orders, directives, and rules, and then they proceed to hail the citizens and business concerns before them for investigation, trial, and judgment, and in that way not only become the law mak-

ers but they interpret their own self-made laws and execute them. They are the law makers, prosecutors, juries, and judges of their own laws.

Mr. SPRINGER. Mr. Chairman, will the gentleman yield?

Mr. ROBSION of Kentucky. I yield to my friend from Indiana.

Mr. SPRINGER. Is it not a fact that every bar association throughout the country is deeply interested in this legislation because the lawyers do not know what procedure to follow and they do not know anything with respect to the law which is followed by these triers or administrators of the laws passed by Congress.

Mr. ROBSION of Kentucky. That is one of the things I was coming to. They change the rules of the game from day to day and without any notice to the American people who will be affected by the directives and rules. As I have stated, here is a group of men or individuals making and changing the laws and then executing them. Our Government is based upon the principle of three branches: Congress makes the laws and the courts interpret them, and the executive branches execute them, but in many of these agencies we find all of these functions of the Government lodged in one person or one board and then in many cases those who are aggrieved of the actions of the administrator or board are denied an appeal to the courts. In some cases where there is an appeal the courts uphold the administrator's or board's action if there is any evidence sustaining the action of the board. It may be against the overwhelming weight of the evidence and the rights of the parties may be ignored. This bill gives the aggrieved party the right to appeal to the courts and the court may set aside or modify the decision of the administrator or board if they ignore the law, the Constitution, or substantial evidence. They cannot sustain a finding or decision of the administrator or board unless there is substantial evidence supported. The administrator or board cannot base their finding on the scintilla rule.

Mr. DONDERO. Mr. Chairman, will the gentleman yield?

Mr. ROBSION of Kentucky. I yield to my friend the gentleman from Michigan [Mr. DONDERO].

Mr. DONDERO. Does this bill go far enough to include those who might seek their day in court under OPA regulations?

Mr. ROBSION of Kentucky. As I understand this bill, it does not give the right of appeal in cases where the Congress has expressly stated there can be no appeal; but unless the right of appeal is denied, I think an appeal could be taken as a matter of course where there was a proper showing that the constitutional rights of the aggrieved party had been invaded; that the act itself did not sustain the award or judgment and an appeal can be taken where Congress provided in the act that an appeal could be taken and the way and manner in which it could be made.

As I recall, some of the provisions in the OPA Act provide for an appeal under certain conditions and circumstances,

but those appeals are limited to the provisions of the acts themselves.

Mr. BENNET of New York. Mr. Chairman, will the gentleman yield?

Mr. ROBSION of Kentucky. I yield to the gentleman from New York [Mr. BENNET].

Mr. BENNET of New York. Are not the war agencies excluded from this bill?

Mr. ROBSION of Kentucky. Some of the acts of Congress expressly exclude an appeal in some cases, and the bill before us excludes the Selective Service Act and a number of other acts.

Mr. HANCOCK of New York. I yield the gentleman an additional 2 minutes.

The CHAIRMAN. The gentleman from Kentucky is recognized for two additional minutes.

Mr. ROBSION of Kentucky. Some of the most commendable features of this bill are:

First. It defines "agency," "person," "party," "rule," "rule-making," "order" and "adjudication," "license" and "licensing," "sanction" and "relief."

Second. It provides that these orders, rules, and directives can only be adopted after reasonable notice, and, when once adopted, they must be published in the Federal Register. These records are open to the public, and they cannot be amended or changed without giving a hearing to interested parties.

Third. This bill recognizes the principles on which our three branches of government are based so that the prosecutor may not get up the evidence, prosecute the case, and, at the same time, decide the case.

Fourth. The interested parties must be given proper notice of the legal and factual issues, with due time to examine, consider, and prepare for them and the parties who are entitled to appear on their own behalf or by counsel either an attorney at law or other person who has been admitted to appear before such board or agency.

Fifth. The agency is required to afford the parties an opportunity for settlement or adjustment of the issues involved where the nature of the proceeding and the public interest permit.

Sixth. All presiding officers and deciding officers are to operate impartially. Such officer may disqualify himself and a party to the proceeding may file proper affidavit to show that the presiding officer has personal bias or is otherwise disqualified. These officers may exclude irrelevant, immaterial, or unduly repetitious evidence.

These are only a few of the many provisions of this bill that leads us to believe that it will improve the administration of justice in administrative procedure of the various agencies and further protect the constitutional rights and the interest of the American people.

(Mr. ROBSION of Kentucky asked and was given permission to revise and extend his remarks.)

Mr. SUMNERS of Texas. Mr. Chairman, I yield 5 minutes to the gentleman from Texas [Mr. RUSSELL].

(Mr. RUSSELL asked and was given permission to revise and extend his remarks.)

Mr. RUSSELL. Mr. Chairman, at the outset I must agree that this bill in its entirety will be a valuable asset to the people of America if it is passed. In the main, it seeks to give the courts a little more function with regard to administrative agencies' rulings, decrees, orders, and judgments. In that respect I am in full accord with the terms of the bill.

Being a member of the lawyers' profession, I have always looked upon the functions of our courts and the jurisprudence of our country in general with jealousy and zealotry. I have always been able to speak with pride of the jurisprudence of the American Government because of the fundamental principles underlying the rules by which the courts, both trial and appellate, are guided. Perhaps some of you do not know it, but as far as I know, without a single exception each general principle of the rules of evidence that have been adopted by the courts is based upon some Biblical quotation. Every rule is taken from the Bible, when you analyze it and run it back to its source. This fact alone should make the American people proud of American jurisprudence. There is one thing I am somewhat apprehensive about in regard to this bill. It is for that reason I take the floor for these few minutes. If you will turn with me to page 38 to subsection (c) of section 10, I want to read the first part of that paragraph to you. It is as follows:

Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review.

That is fine. That is excellent. That is what the American people have been clamoring for for the last few years. The Congress has been clamoring for it too. The paragraph reads further:

Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action.

Now, that is fine. But here is the clause or phrase that I am afraid of:

Except as otherwise expressly required by statute—

I am afraid of that provision. I am not in a position, because I did not know the bill was up for consideration, and I happened into the Chamber and heard this discussion, to answer directly the way in which I think this would preserve the dictatorial powers of that agency or that authorization by law. The law, of course, is what the Congress makes. There are some laws which I am not able to point out to you right now which make it possible for an agency to pass upon a question presented to them on the basis of the slightest evidence, whether it be relevant or irrelevant, whether it be material or immaterial, and whether it be prejudicial or not prejudicial.

The CHAIRMAN. The time of the gentleman from Texas has expired.

Mr. SUMNERS of Texas. Mr. Chairman, I yield three additional minutes to the gentleman.

Mr. SPRINGER. Mr. Chairman, I yield one additional minute to the gentleman.

Mr. RUSSELL. When an agency has such an authorization, which under the authorization is the law, then this act is exempting that agency from a judicial review or a passing upon that evidence, regardless of the kind of evidence it may be.

Mr. WALTER. Mr. Chairman, will the gentleman yield?

Mr. RUSSELL. I am glad to yield to the gentleman.

Mr. WALTER. The gentleman is not seriously contending that an agency decision based upon a mere scintilla of evidence would hold up?

Mr. RUSSELL. If the law has made it such, it will hold up under this very phrase that I have just read. That is what I am afraid of.

Mr. WALTER. Well, the very measure now under consideration is designed to prevent that sort of thing, and will prevent it.

Mr. RUSSELL. But this is the thing I am afraid of, that is, giving life to that power which the measure is supposed to take away.

There is another bill pending in this House, a very controversial bill. Perhaps you heard of it this week on Calendar Wednesday, where a provision is embodied in that bill which I do not believe 25 Members—10 Members—not 5 Members—if they understood the legal effect of that provision, would vote for the bill with that in it, because they would be cutting off their own noses and denying themselves a right which they hold near and dear. That same provision is embodied in that bill. If it becomes law, the law making that scintilla of evidence binding upon the court, then this bill will not take care of it. That is my only objection to this bill. I do not want to tie the hands of the courts, but throughout the years of American history there has developed the most beautiful, the most equitable, the most American jurisprudence known throughout the world, a system of jurisprudence under which each man can go into court where justice, and justice alone, will prevail.

I ask you to look into this question because I am fearful that by this provision you are giving life to that which you think you are destroying.

The CHAIRMAN. The time of the gentleman from Texas has again expired.

Mr. HANCOCK. Mr. Chairman, I yield 5 minutes to the gentleman from New York [Mr. BENNET].

(Mr. BENNET of New York asked and was given permission to revise and extend his remarks.)

Mr. BENNET of New York. Mr. Chairman, I had not expected to speak on this subject today. I have been practicing law for 25 years. I am certainly in sympathy with the provisions of this bill. Nevertheless, I wonder if it is fully understood by the Members of the House.

I want to make the frank admission that I read the bill three or four times and I have also read the report and I do not fully understand it yet. I just asked the gentleman from Kentucky [Mr. ROSSION] a question, to which I did not get the proper answer, which indicates

there may be some misunderstanding even on the part of well-informed Members. My question was: "Does this bill affect the war agencies?" The gentleman indicated he thought it did. It does not. The war agencies are expressly exempted from the provisions of this bill. It is against the war agencies that you hear most of the complaints and criticism. It is against the OPA and the CPA that you hear most of the criticism.

Mr. WALTER. Mr. Chairman, will the gentleman yield?

Mr. BENNET of New York. I yield.

Mr. WALTER. Those agencies are erected under orders and statutes that provide a special method of review of their decisions.

Mr. BENNET of New York. I am well aware of all that, but what I said, that they are not covered by this act, still remains true. Also, that most of the criticisms are against those agencies. That remains true.

Mr. GWYNNE of Iowa. Mr. Chairman, will the gentleman yield?

Mr. BENNET of New York. I yield.

Mr. GWYNNE of Iowa. That matter was discussed at some length in the committee. Of course, we hope we are writing permanent legislation, to be improved as the years go by. We also hope that these war agencies will soon be terminated.

Mr. BENNET of New York. I certainly join in that hope that they will soon be eliminated. I think the great majority of the American citizens feel the same way.

Mr. DONDERO. Mr. Chairman, will the gentleman yield?

Mr. BENNET of New York. I yield.

Mr. DONDERO. A moment ago I asked the gentleman from Kentucky [Mr. ROSSION] whether or not this bill was broad enough to permit a person who got into difficulty with the OPA to have his day in court. I think the gentleman expressed doubt whether it did or not. What is the gentleman's opinion?

Mr. BENNET of New York. My opinion is that it has nothing to do with the OPA.

Mr. DONDERO. That is a war agency. It does not cover the OPA, as I understand it.

Mr. BENNET of New York. Under definitions, section 2, page 22, those agencies and functions which expire on the termination of present hostilities or within any fixed period thereafter, or before July 1, 1947, are not covered. That means war agencies.

Mr. KEFAUVER. Mr. Chairman, will the gentleman yield?

Mr. BENNET of New York. Gladly.

Mr. KEFAUVER. I think I should call the gentleman's attention to the fact that on page 22, line 3, it provides that it shall not apply to war agencies except as to the requirements of section 3. Of course, section 3 requires that their orders be made public. That is about as far as the committee thought it should go in making it applicable to the war agencies.

Mr. BENNET of New York. I am aware of that particular exception. I do not think it affects the general proposition that I am advancing.

I am not going to oppose this bill. I am trying to make it clear that I do not think it is fully understood by all the Members. Before they vote on it I thought perhaps they might like to have a little different approach to it. If I correctly understand this bill, and I shall be pleased to have the members of the committee tell me if I am wrong about it, it does not specifically provide where an appeal should be taken, for which reason I assume the appeal would have to be taken to the District Court of the United States. I am not an expert on these matters, but I think ordinarily bills of this nature have provided for appeals to the circuit court of appeals. If I am correct about that, that means it is going to be quite a long drawn out process of appeal in some of these cases.

Mr. WALTER. Mr. Chairman, will the gentleman yield?

Mr. BENNET of New York. I yield.

Mr. WALTER. The only instance where an appeal can be taken to the circuit court of appeals in the first instance is where there is a special statute providing that method of appeal. In all other instances the appeal must be direct to the United States district court.

Mr. BENNET of New York. That is what I said in substance in my statement. But statutes have been passed which permitted appeals directly to the circuit court of appeals in order to save time. There are any number of administrative agencies covered by this bill and anybody who believes himself injuriously affected by an order can appeal as I understand it to the district court. If he is not satisfied with the decision of the district court he can go on to the circuit court of appeals and then to the United States Supreme Court if they will grant him a writ of certiorari. I would like to have someone tell me whether I am correct or not in this statement that the Pure Food and Drug Administration could find that some article within its purview was deleterious to the public health and issue an order against its distribution. The manufacturer could then go to the district court appealing from that decision and obtain an injunction if the court saw fit to issue an injunction. Am I correct in that statement?

Mr. WALTER. The gentleman is entirely correct, but I cannot conceive of a court's granting an injunction to permit the further distribution of an article that was unfit for human consumption.

Mr. BENNET of New York. That may very well be; nevertheless as I read this bill it can be done. The same thing would be true with respect to the Securities and Exchange Commission issuing an order stating that a certain practice should not be indulged in. The aggrieved party could obtain an injunction and go ahead continuing the alleged improper practice.

The CHAIRMAN. The time of the gentleman from New York has expired.

(Mr. BENNET of New York asked and was given permission to revise and extend his remarks.)

Mr. SUMNERS of Texas. Mr. Chairman, I yield 5 minutes to the gentleman from Tennessee [Mr. KEFAUVER].

Mr. KEFAUVER. Mr. Chairman, first I want to join with the many Members who have spoken here in congratulating the chairman of the committee, the gentleman from Texas, Judge SUMNERS, and the chairman of the subcommittee, the gentleman from Pennsylvania [Mr. WALTER], the ranking minority Members, the gentleman from New York [Mr. HANCOCK], the gentleman from Iowa [Mr. GWYNNE], and others on the subcommittee who have worked so long and so intelligently on this problem. Our chairman, the gentleman from Texas, Judge SUMNERS, deserves special recognition for his good work. He has worked on the problems of administrative practices for many years. He filed H. R. 1203 and H. R. 4941, which are the companion measures to S. 7, which we have before us today. I suppose that in the files of the Judiciary Committee you will find more bills, more proposals, more complaints, and suggestions about administrative procedure than any other one subject. Certainly, during the 7 years I have been in Congress the matter of making provision to have a uniform system of procedure in the agencies of Government has been one of the vital ones before the Congress and the Nation. The committee is to be heartily congratulated on finally being able to get everybody together on at least a beginning of a settlement, a solution of this difficult problem.

In this complex day when Government is interested in so many things, it is, of course, necessary to have administrative agencies which must of necessity be able to make some rules and regulations and to act in quasi-judicial positions in certain instances. Congress cannot, by the very complexity of the situation, make all of the detailed rules and regulations. But in connection with the administration of the agencies, the lawyers of America, the businessmen, and interested people have for many years been perplexed in trying to find some way to get uniformity into the making and publication of regulations and in obtaining a review procedure. Some of the agencies for many years have resisted various administrative procedure bills that have been presented on the theory that the bills would unduly hamstring them in the operation of their departments.

On the other hand, some lawyers of America and many others wanted more drastic rules for the regulation of agencies than the Congress has been willing to impose. Finally the agencies have come to realize that some orderly administration must be worked out for them and they now join in the approval of this legislation.

Various bar associations and committees that have worked on this matter have likewise joined in recommending it.

I have noticed in the debate on the bill that various Members have felt that in some instances the bill went too far, in other instances it did not go far enough; some things should be done that are not done and some things should not be done that are done. This bill will not be entirely satisfactory to every one but it marks an excellent beginning. Only after years of practice, experience, and appli-

cation can we come to see the places where it will need remedying and where it will need strengthening. I think it is going to be greatly in the public interest to have uniform administration in the various agencies of the Government.

There is one matter I feel should be commented on, and that is that lawyers of the United States have always been met with various and different regulations for the practice before the various agencies. For the average lawyer representing his client in sections distant from Washington it is very difficult to know how to be admitted to practice before some of the agencies. Some admit anybody, some admit lawyers only, some admit laymen, and some require specific qualifications. I would like to see it worked out so that any member of the bar who is in good standing in the bar of his own State is at least prima facie eligible to practice law before these various agencies. This could be done while the bill is in conference. I have prepared an amendment which I have shown the chairman of the subcommittee and others which will make this needed improvement. I have had bills pending on the question for years. The gentleman from New York [Mr. HANCOCK], has a bill pending to this effect. The question is not complicated and I should like to see it settled satisfactorily in this measure. The chairman of the subcommittee [Mr. WALTER] indicated he thought well of the proposal.

Mr. Chairman, I take this time mainly to express my thanks for the job that has been done and to say that this is a great day for the judiciary of the country, for the Government and the people in that we have made an excellent beginning in working out these rules and regulations for the various agencies. The committee, the agencies, the bar associations and all who have participated deserve our deep appreciation.

The CHAIRMAN. The time of the gentleman from Tennessee has expired.

Mr. HANCOCK. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. JOHNSON].

Mr. JOHNSON of California. Mr. Chairman, in 1943 when Hon. Earl Warren, the present Governor of California, took office this matter of administrative agencies and their rules and set-up was so acute and confused that he advocated passage of a law laying down the new and uniform rules and procedures that these agencies should observe. That law is almost the same as the pending bill. Therefore, for the information of the Members I would like to make a statement concerning the scope of the operation of the California law. If that experience is any criterion of what we may expect with the bill before us, I am confident everybody, when this law is enacted, will entirely approve of it. It will do a great measure of justice to litigants who appear before these types of boards and administrative agencies.

As I said, the State of California in 1943 passed a similar measure and it has met with wholehearted approval, not only of the agencies coming within the scope of the measure, but with other agencies, who now desire to be brought

within its scope. A brief history of the background of the California Administrative Act follows:

Some time prior to the war the chaotic condition of the rules in effect in various administrative agencies in the State became common knowledge. Some agencies had printed their rules; some had mimeographed them; some had them typewritten; and some agencies had not published them in any form whatsoever, stating that they were within the knowledge of the chairman or other executive officials of the agency. The legislature, taking cognizance of the situation, passed a bill requiring the agencies to file their rules with the Secretary of State, and appointed a codification board composed of the secretary of state, the head of the department of finance, and the legislative counsel. The magnitude of the problem was disclosed upon the filing of the rules. It required several filing drawers to contain the existing rules of some of the agencies. Many of the agencies requested assistance in determining which rules were actually in effect at the time, and similar unfortunate situations were disclosed. A subsequent legislature provided \$70,000 to be used in editing, codifying, and printing the rules in effect in the various agencies, and order began to replace this chaotic condition.

Gov. Earl Warren realized that the situation was acute, and in an address to the members of the State bar of California called upon them to assist in the passage of an administrative procedure act, which would cure many of the defects in administrative agency procedure which were apparent. In certain agencies they acted as investigator, prosecutor, and judge; in others, matters were decided without regard to evidence; and in others, the attorney for the agency, in effect, decided the questions. Certain agencies admitted that when their counsel objected, his objections were invariably sustained, and when the opposition counsel objected, his objections were also overruled.

These agencies had a great deal to do with the life and business of the people of the State, and their effectiveness was being impaired by these procedures.

Following the Governor's speech, the Judicial Council of California, headed by the chief justice of the supreme court, and the administrative agencies' committee of the State bar of California commenced a study, which resulted in the presentation in the 1943 legislature of an administrative procedure act, which was passed and thereafter became law upon its signature by the Governor. It was similar in scope to the present measure under consideration. It concerned itself with the rules and orders issued by the agencies, with the method of investigation, the conduct of hearings, the findings, with the type of evidence which might be introduced, and the scope of judicial review of the agencies' decisions and orders.

Certain California agencies were not included within the jurisdiction of the act because they derived their existence and jurisdiction directly from the Constitution of California, and the legisla-

ture did not have authority to include their procedures under the Administrative Procedure Act. Among these agencies were the Industrial Accident Commission, and the Railroad Commission of the State of California. Since the act has been in effect it has received the acclaim and sincere approval, not only of the bar of California, but of the people of the State, and the officials of the agencies involved. In addition to this, the chief officials of the constitutional agencies above alluded to, have approached the Governor of California and the State bar of the State to ask amendments to the constitution of the State for the purpose of bringing these agencies under the procedure set up in the Administrative Procedure Act of California.

(Mr. JOHNSON of California asked and was given permission to revise and extend his remarks.)

Mr. HANCOCK. Mr. Chairman, I yield 5 minutes to the gentleman from Tennessee [Mr. JENNINGS].

Mr. JENNINGS. Mr. Chairman, this bill is a step in the right direction, but many more of the same tenor and effect need to be taken by Congress. This Government was primarily set up for three general purposes; first, to protect itself and its citizens against foreign aggression; second, to protect the lawbidding members of society against the fraud and violence of the lawless members of society; and, third, through the first 10 amendments, to protect its citizens against the encroachment on their liberties and the destruction of their lives and property rights by the Government itself.

It is one of the paradoxes, one of the tragedies of history, that men and women must sacrifice, fight, and die to establish a Government such as our fathers and mothers set up and then are compelled to fight their own Government to protect themselves against assaults on their liberty, lives, and property. This fact made necessary the adoption of the Bill of Rights embodied in the first 10 amendments to the Federal Constitution. They cover the citizen all over with the armor of the law. And no bureaucrat should be permitted to strip the citizen of their protection.

The Federal Government now touches almost every activity that arises in the lives of millions of people who make up the population of this country. The chief indoor sport of the Federal bureaucrat is to evolve out of his own inner consciousness, like a spider spins his web, countless confusing rules and regulations which may deprive a man of his property, his liberty, and bedevil the very life out of him.

Recently Westbrook Pegler dissected an interesting speech by a young lady who is an official in one of the bureaus here in Washington. I was interested in his article because I heard her make a speech not so long ago at a meeting of the Federal Bar Association in which she said that this bill was pending before the two Houses of Congress, and that the Federal bureaucrats and lawyers who served these bureaus and bureaucrats should be on their toes and should do their best to prevent the passage of this

bill or any similar bill because she said that it would put the Federal bureaucrats and the lawyers whom they had on their pay rolls in a strait-jacket.

Well, I was interested in that frank confession and I became interested in fitting a restraining legal straitjacket on these people who have been harassing the citizens of this country. As I have said, one of their principal indoor sports is to promulgate these rules and regulations.

Now, this bill does three things generally, you might say. It puts a legal restraint upon the power of these bureaus to promulgate rules and regulations and gives the citizen who may be affected by them the right to a hearing, to make suggestions, and to enter protest against the proposed rule, and then it gives the citizen the right to a hearing before these bureaus. It requires that the rules and regulations shall be made public, and as a last resort when the citizen has exhausted his remedy before some Federal bureau here in Washington, he has a right to go into court and undertake to protect himself.

I just want to read some of the things that this enterprising young woman had to say. Mr. Pegler said of her speech before a meeting of the Texas Bar Association:

Though cynical, Miss Rawalt was thoroughly honest and practical. The citizen occupied no place in her remarks. Her message was an exhortation to her fellow lawyers to get aware of the existence of government by bureaucracy and to grab off their share of the loot from a Nation bedeviled by confusing and harassing rules, regulations and interpretations, many of them improvised by New Deal bureaus operating as courts.

* * * the extent to which the citizen has been elbowed out of court and into New Deal bureaus for his justice, constantly in need of lawyers to keep him out of jail, is thoroughly convincing, Miss Rawalt certainly would not exaggerate.

"Speaking of opportunity," the lady said, "are the lawyers of this country, men and women, going to take full advantage of their opportunities in administrative law? It is the most rapidly expanding area of law practice today. There are some 217 special courts, bureaus and commissions which today decide upon and administer various Federal laws directly affecting citizens and business firms in this country. This does not take into account similar State quasijudicial bodies.

Administrative law, through the Federal Communications Commission, regulates the programs you hear on your radio and determines the use of the telephone and telegraph in our country today. Administrative law, through the Federal Trade Commission, determines various trade practices within the industries of this Nation. Administrative law through the OPA and other departments, regulates what food you may buy and what you may pay for it. Concurrent with the phenomenal growth in this field of law, there has been a sudden decrease in the number of lawyers.

Then this young woman told the Texas lawyers that they should "stake their claim in this promising professional gold mine now and avoid the costly process of ejectment of others who have laid claims thereto." She urged them to familiarize themselves with the bureau where this administrative law is administered. She also called their attention to the fact that a certain provision which was expressed

in 500 words in the original income-tax law now runs to 2,300 words.

Then she stressed the statement of Mr. Justice Frankfurter, who recently said in one of his opinions:

The notion that because the words of a statute are plain, its meaning also is plain, is merely pernicious overamplification.

In other words, words do not mean what they say and things are not as they appear to the naked eye and to ordinary human intelligence.

Mr. Chairman, for the reason I have stated and for many other reasons that might be stated, I hope this bill is enacted by this House as passed by the Senate. It will give a long-suffering public much-needed relief.

Mr. CURTIS. Mr. Chairman, will the gentleman yield?

Mr. JENNINGS. I yield to the gentleman from Nebraska.

Mr. CURTIS. I will say to the gentleman from Tennessee that I shall support this measure. I think the gentleman made one point that should be well remembered, that this is only a step in establishing a government of law in these days of bureaus. I hope the time will soon come when we can standardize the procedure before all these bureaus so that the lawyer who lives near the citizen can find out what the procedure is before these various bureaus.

Mr. JENNINGS. And may represent him in a court among his own people and in his own State. It was never contemplated or intended by the founders of this Republic that the power to legislate vested in Congress should be usurped by a bunch of appointive officers here in Washington who were never elected by any constituency and never could be.

Mr. SUMNERS of Texas. Mr. Chairman, I yield myself the remainder of the time.

Mr. Chairman, this is one of the most important items of legislation that has been reported by the Committee on the Judiciary since I have been a member of that committee, and one of the most important that has been considered by this House in a long time. I do not believe any item of legislation that I know of has received broader and more earnest, patriotic consideration by so many groups of our citizenship, as well as Government agencies themselves and individuals in different branches of the Government service.

The subcommittee of the Committee on the Judiciary which had first responsibility is Subcommittee No. 3, of which the gentleman from Pennsylvania [Mr. WALTER] is the able chairman, and the gentleman from Tennessee [Mr. KEFAUVER], the gentleman from South Carolina [Mr. BRYSON], the gentleman from Massachusetts [Mr. LANE], the gentleman from Iowa [Mr. GWYNNE], the gentleman from Connecticut [Mr. TALBOT], and the gentleman from Ohio [Mr. LEWIS] members of that subcommittee, have done a fine job, as has the entire membership of the Judiciary Committee. There have been differences of opinion, but in the main they have been composed during the long consideration of the legislation.

An interesting historical fact about this bill is that the American Bar Association began to manifest interest in this type of legislation as far back as 1935. William L. Ransom was then its president. Through the intervening administration of Presidents Frederick H. Stinchfield, Arthur T. Vanderbilt, Frank J. Hogan, Charles A. Beardsley, Jacob M. Lashly, Walter A. Armstrong, George Maurice Morris, Joseph W. Henderson, David A. Simmons, and Willis Smith that interest has continued reaching out into all parts of the country, resulting in invaluable contributions toward this final result. In this connection I want to mention with special appreciation the service of Mr. Carl McFarland, of the committee of the American Bar Association for this legislation. This legislation has been examined by more different groups of people than any other I know of, and a remarkable unanimity of attitude has been worked out.

As far as I am concerned, I hope that much of this power that is being administered by the Federal Government through these agencies can be got rid of entirely and that some of the rest be sent back into the States. But after that is done there will remain, of course, necessary Federal powers in Federal agencies. This bill seeks to bring the exercise of these powers into the general pattern of democratic government. In framing this bill there has been caution not to incorporate provisions which would reduce the efficiency of these agencies which must be depended upon to render important public service. It is believed that has been done. In fact, this bill, it seems generally agreed, goes far in the right direction—as far as we can safely go, at least until we shall have got the guidance of experience. The gentleman from Pennsylvania [Mr. WALTER] and the members of his subcommittee have rendered a great public service. I hope the bill will be unanimously passed, and without amendment.

I very much hope and expect that this bill will be accepted by the House as it has been reported by the committee. There is every reason to believe that the modifications of the Senate bill which are incorporated in this bill will be satisfactory to the Senate; that there will be early action by that body; that the President will promptly approve; and this important, long-needed legislation will soon be on the statute books.

(Mr. SUMNERS of Texas asked and was given permission to revise and extend his remarks.)

Mr. WALTER. Mr. Chairman, I yield 2 minutes to the gentleman from Mississippi [Mr. RANKIN].

ICKES THE "OPTOMIST"

Mr. RANKIN. Mr. Chairman, our old friend, Harold L. Ickes, seems to be going "hay wire."

He seems to think he is Secretary of the Ex-terior, and is constantly shadow-boxing with himself.

The other night he attended a Negro banquet downtown and made a speech in which he attacked the white people of the South, especially of Mississippi, and

more especially of my congressional district.

He is quoted as having said that I was elected by only 3 percent of the voters of the district.

Of course, every intelligent man knows that in those States where we have no opposition in the general election the vote is always light.

The next day, after his speech, two Negroes were discussing it out here on the streets. One of them said: "You know what's the matter wid Mr. Ikus?"

The other one asked, "What you think is wrong wid 'im?"

"Well," he said, "he seems to be puffed up wid his own consequences."

The other one said, "You's wrong; Mr. Ikus is just an optomist."

The first one asked: "What is a optomist?"

The other one said: "An optomist is a fella 't just don't give a damn what happens, so it don't happen to him."

The CHAIRMAN. The Clerk will read. The Clerk read, as follows:

Be it enacted, etc., That this act may be cited as the "Administrative Procedure Act."

With the following committee amendment:

Strike out all after the enacting clause and insert:

"TITLE

"SECTION 1. This act may be cited as the 'Administrative Procedure Act.'

"DEFINITIONS

"SEC. 2. As used in this act—

"(a) Agency: 'Agency' means each authority (whether or not within or subject to review by another agency) of the Government of the United States other than Congress, the courts, or the governments of the possessions, Territories, or the District of Columbia. Nothing in this act shall be construed to repeal delegations of authority as provided by law. Except as to the requirements of section 3, there shall be excluded from the operation of this act (1) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them, (2) courts martial and military commissions, (3) military or naval authority exercised in the field in time of war or in occupied territory, or (4) functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947, and the functions conferred by the following statutes: Selective Training and Service Act of 1940; Contract Settlement Act of 1944; Surplus Property Act of 1944.

"(b) Person and party: 'Person' includes individuals, partnerships, corporations, association, or public or private organizations of any character other than agencies. 'Party' includes any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any agency proceeding; but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes.

"(c) Rule and rule making: 'Rule' means the whole or any part of any agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of any agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or

practices bearing upon any of the foregoing. 'Rule making' means agency process for the formulation, amendment, or repeal of a rule.

"(d) Order and adjudication: 'Order' means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of any agency in any matter other than rule making but including licensing. 'Adjudication' means agency process for the formulation of an order.

"(e) License and licensing: 'License' includes the whole or part of any agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission. 'Licensing' includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation amendment, modification, or conditioning of a license.

"(f) Sanction and relief: 'Sanction' includes the whole or part of any agency (1) prohibition, requirement, limitation, or other condition affecting the freedom of any person; (2) withholding of relief; (3) imposition of any form of penalty or fine; (4) destruction, taking, seizure, or withholding of property; (5) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees; (6) requirement, revocation, or suspension of a license; or (7) taking of other compulsory or restrictive action. 'Relief' includes the whole or part of any agency (1) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy; (2) recognition of any claim, right, immunity, privilege, exemption, or exception; or (3) taking of any other action upon the application or petition of, and beneficial to, any person.

"(g) Agency proceeding and action: 'Agency proceeding' means any agency process as defined in subsections (c), (d), and (e) of this section. 'Agency action' includes the whole or part of every agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.

"PUBLIC INFORMATION

"SEC. 3. Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of an agency—

"(a) Rules: Every agency shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organization delegations by the agency of final authority and the established places at which, and methods whereby, the public may secure information or make submittals or requests; (2) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations; and (3) substantive rules adopted as authorized by law and statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public, but not rules addressed to and served upon named persons in accordance with law. No person shall in any manner be required to resort to organization or procedure not so published.

"(b) Opinions and orders: Every agency shall publish or, in accordance with published rule, make available to public inspection all final opinions or orders in the adjudication of cases (except those required for good cause to be held confidential and not cited as precedents) and all rules.

"(c) Public records: Save as otherwise required by statute, matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found.

"RULE MAKING

"SEC. 4. Except to the extent that there is involved (1) any military, naval, or foreign affairs function of the United States or (2) any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts—

"(a) Notice: General notice of proposed rule making shall be published in the Federal Register (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law) and shall include (1) a statement of the time, place, and nature of public rule-making proceedings; (2) reference to the authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved. Except where notice or hearing is required by statute, this subsection shall not apply to interpretative rules, general statements of policy, rules of agency organization, procedure, or practice, or in any situation in which the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

"(b) Procedures: After notice required by this section, the agency shall afford interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity to present the same orally in any manner, and, after consideration of all relevant matter presented, the agency shall incorporate in any rules adopted a concise general statement of their basis and purpose. Where rules are required by statute to be made on the record after opportunity for an agency hearing, the requirements of sections 7 and 8 shall apply in place of the provisions of this subsection.

"(c) Effective dates: The required publication or service of any substantive rule (other than one granting or recognizing exemption or relieving restriction or interpretative rules and statements of policy) shall be made not less than 30 days prior to the effective date thereof except as otherwise provided by the agency upon good cause found and published with the rule.

"(d) Petitions: Every agency shall accord any interested person the right to petition for the issuance, amendment, or repeal of a rule.

"ADJUDICATION

"SEC. 5. In every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved (1) any matter subject to a subsequent trial of the law and the facts de novo in any court; (2) the selection or tenure of an officer or employee of the United States other than examiners appointed pursuant to section 11; (3) proceeding in which decisions rest solely on inspections, tests, or elections; (4) the conduct of military, naval, or foreign-affairs functions; (5) cases in which an agency is acting as an agent for a court; and (6) the certification of employee representatives—

"(a) Notice: Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, and nature thereof; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) the matters of fact and law asserted. In instances in which private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the times and places for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

"(b) Procedure: The agency shall afford all interested parties opportunity for (1) the submission and consideration of facts, argument, offers of settlement, or proposals of adjustment where time, the nature of the proceeding, and the public interest permit, and (2) to the extent that the parties are unable so to determine any controversy by consent, hearing, and decision upon notice and in conformity with sections 7 and 8.

"(c) Separation of functions: The same officers who preside at the reception of evidence pursuant to section 7 shall make the recommended decision or initial decision required by section 8 except where such officers become unavailable to the agency. Save to the extent required for the disposition of ex parte matters as authorized by law, no such officer shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate; nor shall such officer be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency. No officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency in any case shall, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 8 except as witness or counsel in public proceedings. This subsection shall not apply in determining applications for initial licenses or to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; nor shall it be applicable in any manner to the agency or any member or members of the body comprising the agency.

"(d) Declaratory orders: The agency is authorized in its sound discretion, with like effect as in the case of other orders, to issue a declaratory order to terminate a controversy or remove uncertainty.

"ANCILLARY MATTERS

"SEC. 6. Except as otherwise provided in this act—

"(a) Appearance: Any person compelled to appear in person before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. Every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in any agency proceeding. So far as the orderly conduct of public business permits, any interested person may appear before any agency or its responsible officers or employees for the presentation, adjustment, or determination of any issue, request, or controversy in any proceeding (interlocutory, summary, or otherwise) or in connection with any agency function. Every agency shall proceed with reasonable dispatch to conclude any matter presented to it except that due regard shall be had for the convenience and necessity of the parties or their representatives. Nothing herein shall be construed either to grant or to deny to any person who is not a lawyer the right to appear for or represent others before any agency or in any agency proceeding.

"(b) Investigations: No process, requirement of a report, inspection, or other investigative act or demand shall be issued, made, or enforced in any manner or for any purpose except as authorized by law. Every person compelled to submit data or evidence shall be entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

"(c) Subpenas: Agency subpenas authorized by law shall be issued to any party upon

request and, as may be required by rules of procedure, upon a statement or showing of general relevance and reasonable scope of the evidence sought. Upon contest the court shall sustain any such subpoena or similar process or demand to the extent that it is found to be in accordance with law and, in any proceeding for enforcement, shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of contumacious failure to comply.

"(d) Denials: Prompt notice shall be given of the denial in whole or in part of any written application, petition, or other request of any interested person made in connection with any agency proceeding. Except in affirming a prior denial or where the denial is self-explanatory, such notice shall be accompanied by a simple statement of procedural or other grounds.

"HEARINGS

"SEC. 7. In hearings which section 4 or 5 requires to be conducted pursuant to this section—

"(a) Presiding officers: There shall preside at the taking of evidence (1) the agency, (2) one or more members of the body which comprises the agency, or (3) one or more examiners appointed as provided in this act; but nothing in this act shall be deemed to supersede the conduct of specified classes of proceedings in whole or part by or before boards or other officers specially provided for by or designated pursuant to statute. The functions of all presiding officers and of officers participating in decisions in conformity with section 8 shall be conducted in an impartial manner. Any such officer may at any time withdraw if he deems himself disqualified; and, upon the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification of any such officer, the agency shall determine the matter as a part of the record and decision in the case.

"(b) Hearing powers: Officers presiding at hearings shall have authority, subject to the published rules of the agency and within its powers, to (1) administer oaths and affirmations, (2) issue subpoenas authorized by law, (3) rule upon offers of proof and receive relevant evidence, (4) take or cause depositions to be taken whenever the ends of justice would be served thereby, (5) regulate the course of the hearing, (6) hold conferences for the settlement or simplification of the issues by consent of the parties, (7) dispose of procedural requests or similar matters, (8) make decisions or recommend decisions in conformity with section 8, and (9) take any other action authorized by agency rule consistent with this act.

"(c) Evidence: Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses any agency may, where the interest of any party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

"(d) Record: The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision in accordance with section 8 and, upon payment of lawfully prescribed costs, shall be made available to the parties. Where any agency decision rests on official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the contrary.

"DECISIONS

"Sec. 8. In cases in which a hearing is required to be conducted in conformity with section 7—

"(a) Action by subordinates: In cases in which the agency has not presided at the reception of the evidence, the officer who presided (or, in cases not subject to subsection (c) of section 5, any other officer or officers qualified to preside at hearings pursuant to section 7) shall initially decide the case or the agency shall require (in specific cases or by general rule) the entire record to be certified to it for initial decision. Whenever such officers make the initial decision and in the absence of either an appeal to the agency or review upon motion of the agency within time provided by rule, such decision shall without further proceedings then become the decision of the agency. On appeal from or review of the initial decisions of such officers the agency shall, except as it may limit the issues upon notice or by rule, have all the powers which it would have in making the initial decision. Whenever the agency makes the initial decision without having presided at the reception of the evidence, such officers shall first recommend a decision except that in rule making or determining applications for initial licenses (1) in lieu thereof the agency may issue a tentative decision or any of its responsible officers may recommend a decision or (2) any such procedure may be omitted in any case in which the agency finds upon the record that due and timely execution of its function imperatively and unavoidably so requires.

"(b) Submittals and decisions: Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings or conclusions. The record shall show the ruling upon each such finding, conclusion, or exception presented. All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof.

"SANCTIONS AND POWERS

"Sec. 9. In the exercise of any power or authority—

"(a) In general: No sanction shall be imposed or substantive rule or order be issued except within jurisdiction delegated to the agency and as authorized by law.

"(b) Licenses: In any case in which application is made for a license required by law the agency, with due regard to the rights or privileges of all the interested parties or adversely affected persons and with reasonable dispatch, shall set and complete any proceedings required to be conducted pursuant to sections 7 and 8 of this act or other proceedings required by law and shall make its decision. Except in cases of willfulness or

those in which public health, interest, or safety requires otherwise, no withdrawal, suspension, revocation, or annulment of any license shall be lawful unless, prior to the institution of agency proceedings therefor, facts or conduct which may warrant such action shall have been called to the attention of the licensee by the agency in writing and the licensee shall have been accorded opportunity to demonstrate or achieve compliance with all lawful requirements. In any case in which the licensee has, in accordance with agency rules, made timely and sufficient application for a renewal or a new license, no license with reference to any activity of a continuing nature shall expire until such application shall have been finally determined by the agency.

"JUDICIAL REVIEW

"Sec. 10. Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—

"(a) Right of review: Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

"(b) Form and venue of action: The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. Agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.

"(c) Reviewable acts: Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final shall be final for the purposes of this subsection whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule and provides that the action meanwhile shall be inoperative) for an appeal to superior agency authority.

"(d) Interim relief: Pending judicial review any agency is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, every reviewing court (including every court to which a case may be taken on appeal from or upon application for certiorari or other writ to a reviewing court) is authorized to issue all necessary and appropriate process to postpone the effective date of any agency action or to preserve status or rights pending conclusion of the review proceedings.

"(e) Scope of review: So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) with-

out observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

"EXAMINERS

"Sec. 11. Subject to the civil-service and other laws to the extent not inconsistent with this act, there shall be appointed by and for each agency as many qualified and competent examiners as may be necessary for proceedings pursuant to sections 7 and 8, who shall be assigned to cases in rotation so far as practicable and shall perform no duties inconsistent with their duties and responsibilities as examiners. Examiners shall be removable by the agency in which they are employed only for good cause established and determined by the Civil Service Commission (hereinafter called the Commission) after opportunity for hearing and upon the record thereof. Examiners shall receive compensation prescribed by the Commission independently of agency recommendations or ratings and in accordance with the Classification Act of 1923, as amended, except that the provisions of paragraphs (2) and (3) of subsection (b) of section 7 of said act, as amended, and the provisions of section 9 of said act, as amended, shall not be applicable. Agencies occasionally or temporarily insufficiently staffed may utilize examiners selected by the Commission from and with the consent of other agencies. For the purposes of this section, the Commission is authorized to make investigations, require reports by agencies, issue reports, including an annual report to the Congress, promulgate rules, appoint such advisory committees as may be deemed necessary, recommend legislation, subpoena witnesses or records, and pay witness fees as established for the United States courts.

"CONSTRUCTION AND EFFECT

"Sec. 12. Nothing in this act shall be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. If any provision of this act or the application thereof is held invalid, the remainder of this act or other applications of such provision shall not be affected. Every agency is granted all authority necessary to comply with the requirements of this act through the issuance of rules or otherwise. No subsequent legislation shall be held to supersede or modify the provisions of this act except to the extent that such legislation shall do so expressly. This act shall take effect 3 months after its approval except that sections 7 and 8 shall take effect 6 months after such approval, the requirement of the selection of examiners pursuant to section 11 shall not become effective until 1 year after such approval, and no procedural requirement shall be mandatory as to any agency proceeding initiated prior to the effective date of such requirement."

Mr. SUMNERS of Texas (during the reading of the amendment). Mr. Chairman, I ask unanimous consent that the further reading of the amendment may be dispensed with; that it be printed in the RECORD; and that any section of it may be subject to amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. KEFAUVER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. KEFAUVER: On page 30, line 15, after the period, insert "any member of the bar who is in good standing and who has been admitted to the bar of the Supreme Court of the United States or of the highest court of the State of his or her residence shall be eligible to practice before any agency: *Provided, however,* That an agency shall for good cause be authorized by order to suspend or deny the right to practice before such agency."

Mr. KEFAUVER. Mr. Chairman, I discussed this amendment a few minutes ago. I think this is an important question which we ought to settle now. This bill has to go to conference and some changes will have to be made. I do not see how there can be very much objection to the inclusion of some provision relative to the establishment of a uniform system of practicing before the agencies. As the situation now exists, some agencies permit laymen to practice; some permit lawyers; some few agencies require a person to register and be introduced. I think in one or two agencies they require a person to take some kind of an examination before being admitted. In this country there is no reason in the practice before the agencies of the United States Government why a member of the bar who is in good standing and who has been admitted to the Supreme Court of the United States or to the highest court in his or her State of residence should not prima facie be eligible to practice before any agency of the Government.

Mr. GWYNNE of Iowa. Mr. Chairman, will the gentleman yield?

Mr. KEFAUVER. I yield.

Mr. GWYNNE of Iowa. Is that not provided for in section 6? The appearance is there provided for. Someone who is a lawyer and also someone who is not a lawyer.

Mr. KEFAUVER. I will say to the gentleman I have studied section 6 with that in mind. I think in the committee that we really intended to let the person choose his own lawyer to go with him before the agency and that every lawyer in good standing should be accepted. But we still do not say that that agency shall be required to accept him, if he is in good standing in the State of his residence or that he is entitled to practice. The agencies still might have artificial barriers or rules which would keep him from practicing. I think this should be included so that when the matter goes to conference it can be ironed out if my proposal is not entirely acceptable.

Mr. MAY. Mr. Chairman, will the gentleman yield?

Mr. KEFAUVER. I yield.

Mr. MAY. I believe that any man who holds a license to practice law in any State ought to be eligible to practice before these agencies. I am afraid the gentleman's amendment would limit it to those who are authorized to practice before the supreme court, or the court of

final resort in the State in which he lives. There are many members of the bar who are admitted to practice in the State who have not been admitted to practice before the supreme court in their own State.

Mr. KEFAUVER. Of course, if they are entitled to practice before the Supreme Court of Kentucky, they would not have to be admitted to practice before the Supreme Court of the United States before they could practice before the agency. I do not think this is too much of a requirement to ask of these people, to say that they be admitted to practice in the highest court in their State. Of course, if the agency now admits laymen or licensed lawyers who have not been admitted to the Supreme Court of the United States or to their State supreme court to practice before the agency they would continue to do so. This amendment does not say that only certain lawyers shall be so entitled. It only provides for a class who shall have an absolute right to practice. If the agency allows others, they would not be excluded by this amendment.

Notice, also, the amendment gives the agency a right to suspend or deny the right if it has good reason for so doing such as misconduct or unethical methods.

Mr. HANCOCK. Mr. Chairman, will the gentleman yield?

Mr. KEFAUVER. I yield to the gentleman from New York, who has introduced legislation heretofore to cover this point.

Mr. HANCOCK. I did, in the Seventy-eighth and again in the Seventy-ninth Congress. I know it is controversial. I dislike to jeopardize this bill by putting on an amendment which I regard as controversial, which may possibly cause delay, and may defeat the bill. I have heard from a number of these agencies and departments downtown strongly opposed to my bill. Let us bring that out as a separate proposition. Let us have hearings on it and let us come to the House with that definition. Let us not muddy up the waters on this bill. We have got this bill in shape to be passed and approved by the President and to become law. I am very much opposed to the gentleman's amendment, although I proposed it myself as a separate bill.

Mr. KEFAUVER. I do not think there is anything so complicated about it that it cannot be worked out in conference. Perhaps this is not exactly the right language but there should not be difficulty in working out a satisfactory provision.

Mr. DONDERO. Mr. Chairman, will the gentleman yield?

Mr. KEFAUVER. I yield.

Mr. DONDERO. I was impressed with the gentleman's amendment, but I rose to ask this question: What happens in the case of an attorney admitted to the bar within the District of Columbia but who has no certificate either before the highest court of the State of his residence or of the United States Supreme Court?

Mr. KEFAUVER. Of course, members of the bar of the District of Columbia are usually members of the United States Supreme Court. If they are not they could still practice before the agencies if they can now.

Mr. DONDERO. They must be admitted here?

Mr. KEFAUVER. Yes.

The CHAIRMAN. The time of the gentleman from Tennessee has expired.

Mr. FORAND. Mr. Chairman, I ask unanimous consent that the gentleman may have 5 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Rhode Island?

Mr. WALTER. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Mr. WALTER. Mr. Chairman, I rise in opposition to the amendment.

It is indeed unfortunate that the gentleman from Tennessee [Mr. KEFAUVER] brings up this very important and complicated question at this late moment. After all, the committee having this measure under consideration for many months, considered all phases of this problem. As the distinguished gentleman from New York [Mr. HANCOCK], has said, what the gentleman from Tennessee [Mr. KEFAUVER], proposes is something that should be the subject matter of separate legislation.

I would like to call the attention of the House to the language with respect to eligibility:

Every member shall be accorded the right to appear in person or by or with counsel—

Now that is mandatory—

or other duly qualified representative in any agency proceeding.

It certainly seems to me that anyone duly qualified may under this language appear to practice before any agency; and I am afraid that if we set up the standards suggested by the gentleman from Tennessee that instead of making it necessary for an agency to permit anyone duly qualified to appear, we might exclude people who have for the purpose of particular litigation been retained.

Mr. MATHEWS. Mr. Chairman, will the gentleman yield?

Mr. WALTER. I yield.

Mr. MATHEWS. I am interested to know the gentleman's own definition of the word "counsel." It seems to me it might not be limited to legal counsel, or it might include legal counsel and something else.

Mr. WALTER. The gentleman has suggested one of the fields into which we might well stray. What the committee meant by that was a member of the bar.

Mr. MATHEWS. The bill does not say so.

Mr. FORAND. Mr. Chairman, will the gentleman yield?

Mr. WALTER. I yield.

Mr. FORAND. Is it the intent of the committee that because a person is not a member of the bar he would not be permitted to appear before an agency?

Mr. WALTER. Of course not, and we say so in the bill. We have taken care of certified public accountants and other experts who have been practicing for years before particular agencies.

Mr. FORAND. In other words, they need not be lawyers.

Mr. WALTER. That is right.

Mr. SUMNERS of Texas. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, I very much hope we will not adopt this proposed amendment. It is now demonstrated that it is highly controversial.

This bill has been worked on for a very long time. Many many groups of people have contributed and are tremendously interested in it, the whole country is and I know most of us on the committee hope we can vote this bill out without amendment and let it go back to the Senate where there is every reason to expect the final act of its congressional progress will be completed the President will sign it and it will be a part of the law of the land.

Mr. JENNINGS. Mr. Chairman, I rise in opposition to the pro forma amendment.

Mr. Chairman, with all due deference to my distinguished and learned friend from Tennessee, I am inclined to believe that his amendment is tantamount to throwing a monkey wrench into the machinery, putting sand in the bearings and water in the gasoline. As I recall, when this measure was before the committee the gentleman did not suggest this amendment.

It reminds me of the old fellow with whom I was boarding once when I was teaching school who had been in the legislature, and he was so entranced with his experience in that body that I really believe that if he had been standing on the threshold of the new Jerusalem and were about to be ushered in and somebody had offered him another seat in the Tennessee Legislature he would have turned his back on Paradise and gone back to the legislature.

Mr. KEFAUVER. Mr. Chairman, will the gentleman yield?

Mr. JENNINGS. No; not now; I am not in a yielding mood.

He once asked me this question, "If you were a member of the legislature and wanted to kill a bill, what would you do to kill it?"

"Well," I said, "I would make a speech against it; I would talk to my colleagues and suggest the reasons why it should be rejected and try to get them to help me kill it."

"Oh," he said, "you don't know how to kill a bill."

I asked, "Uncle John, what would you do?" He said, "Introduce an amendment to kill the constitutionality of the bill."

My friend here has used this method to stop the passage of this long-needed legislation by offering an amendment that will make it obnoxious and perhaps lead to its veto by the President.

Let us vote down the amendment offered by my good friend from Tennessee.

Mr. SABATH. Mr. Chairman, I move to strike out the last two words.

Mr. Chairman, the gentleman who just preceded me criticized the gentleman from Tennessee because he did not appear before the Judiciary Committee and offer his amendment.

Mr. KEFAUVER. Mr. Chairman, will the gentleman yield?

Mr. SABATH. I yield.

Mr. KEFAUVER. I tried to get my friend from Tennessee to yield to say that for many years along with the gentleman from New York, [Mr. HANCOCK], I have had bills pending on this very matter. I happen to be a member of the subcommittee and talked about this proposal with the chairman of the subcommittee. The gentleman from Tennessee not being a member of the committee, of course, would not know that, and I am sorry that he opposes the amendment.

Mr. SABATH. Mr. Chairman, I am not a member of the committee that reported this splendid bill which I believe should pass by unanimous vote. However, I have great respect for and confidence in the gentleman from Tennessee. If he has not been before the Judiciary Committee and did not offer this amendment to that committee, it must be the only committee he did not appear before asking for legislation which he believes is in the interest of the people. He is a most active member, he possesses great intelligence and ability and deserves the appreciation of the Members of this House. I therefore regret that the gentleman who preceded me should criticize and make point of the fact that the gentleman from Tennessee was not present and did not offer the amendment. He appears before the Rules Committee very often, perhaps more often than any other member, and every time he comes before that committee he appears in the interest of legislation that is for the benefit of the masses, in the interest of good government and in the interest of good administration.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Tennessee [Mr. KEFAUVER] to the committee amendment.

The amendment to the committee amendment was rejected.

Mr. WALTER. Mr. Chairman, on page 28 there is a typographical error. In line 3, after the word "the" the word "selfection" should be changed to "selection," I ask unanimous consent that the correction be made.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. WALTER. Mr. Chairman, on page 34, line 5, the section should be (d), not (b). I ask unanimous consent that that correction be made.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The CHAIRMAN. The question is on the committee amendment.

The committee amendment was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. SMITH of Virginia, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (S. 7) to improve the administration of justice by prescribing fair administrative procedure, pursuant to House Resolution 615, he reported the bill back to the House with an amend-

ment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

The question is on the amendment.

The amendment was agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the bill.

The bill was passed.

A motion to reconsider was laid on the table.

EXTENSION OF REMARKS

Mr. FORAND asked and was given permission to extend his remarks in the RECORD.

Mr. TABER asked and was given permission to extend his remarks in the RECORD and include a letter he wrote to the President of the United States and to the Attorney General.

SPECIAL ORDER GRANTED

Mr. HOLIFIELD. Mr. Speaker, I ask unanimous consent that on Monday next, at the conclusion of the legislative program of the day and following any special orders heretofore entered, I may be permitted to address the House for 30 minutes.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

EXTENSION OF REMARKS

Mr. HOBBS. Mr. Speaker, I ask unanimous consent to extend my remarks at the point in the RECORD where I got permission from the committee and to include therein a letter and different indexes from the Attorney General of the United States.

The SPEAKER. Is there objection to the request of the gentleman from Alabama?

There was no objection.

Mr. D'ALESSANDRO asked and was given permission to extend his remarks in the RECORD and include a letter he wrote to Gen. Omar Bradley, also letter he wrote to a legislative committee of the House and its reply thereto.

Mr. SASSER asked and was given permission to extend his remarks in the RECORD and include an essay which was submitted in the Nation-wide "Food plank for peace."

PERMISSION TO ADDRESS THE HOUSE

Mr. MICHENER. Mr. Speaker, I ask unanimous consent to proceed for 1 minute.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

PROGRAM FOR NEXT WEEK

Mr. MICHENER. I do this for the purpose of asking the majority leader what the program for tomorrow and next week will be?

Mr. MCCORMACK. There will be no legislation tomorrow. I feel, however, that we ought to meet tomorrow.

Monday is District Day. One bill, H. R. 6265, is on the calendar. That is the bill that came up 2 weeks ago, and I understand that there will be no objection to it. If the stock-pile bill is disposed of today there will be no further legislation on Monday.

Tuesday we will hold memorial exercises for the deceased Members, and there will be no legislation that day.

Wednesday we will take up the third urgency deficiency bill, then House Concurrent Resolution 148, and then H. R. 2871, the Alaskan International Highway Commission.

Thursday is Memorial Day, and there will be no legislation on that day.

Friday we will take up H. R. 5674, a bill relating to protection work in connection with Yuma and Boulder Dam.

That is the program for next week.

Mr. MICHENER. With reference to tomorrow, as I understand, we will be in session for the purpose of being available if the President desires to send any request to the Congress, for legislation dealing with the terrible strike situation prevailing in the country.

Mr. McCORMACK. We will be in session tomorrow. I cannot state that it is for that reason. We will be in session tomorrow because I think it is well for us to be in session.

Mr. MICHENER. It is not usual to sit on Saturday, and in case the President does not take judicial notice of the session, I hope that the distinguished majority leader will advise the President that the House will be in session tomorrow and will be glad to receive any message dealing with this terrible strike situation.

Mr. McCORMACK. The suggestions of the gentleman from Michigan are always welcomed, but in this case I think the President will take legislative notice of the fact that we are in session, and we will be in session not because of the reason stated by the gentleman, but because the leadership feels that we should be in session tomorrow in view, I will agree, of the disturbing and alarming situation that exists, which we all hope that forward-looking, constructive, sane, common sense leadership in the best interest of the country will settle immediately.

Mr. MICHENER. I quite agree with the gentleman, and we are in exact harmony. We, on this side, will be glad to be here, and render any service we can to the administration in dealing with this critical condition.

STRATEGIC AND CRITICAL MATERIALS— NATIONAL DEFENSE

Mr. SABATH. Mr. Speaker, I call up House Resolution 626 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (S. 752) to amend the act of June 7, 1939 (53 Stat. 811), as amended, relating to the acquisition of stocks of strategic and critical materials for national defense purposes. That after general debate, which shall be confined to the bill and continue not to exceed 1 hour, to be equally divided and

controlled by the chairman and the ranking minority member of the Committee on Military Affairs, the bill shall be read for amendment under the 5-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

Mr. SABATH. Mr. Speaker, this rule makes in order the consideration of the bill S. 752 as amended by the House Committee on Military Affairs. It is a unanimous report, and I think the bill will receive the unanimous approval of the House, as did the bill we just passed.

The bill provides for the acquisition of strategic and critical material for defense purposes. It authorizes the Secretary of War, the Secretary of the Navy, and the Secretary of the Interior to act in conjunction with the Army and Navy Munitions Board to acquire the needed critical materials from time to time, and to dispose of some of it which might not be needed and the disposition of which might be justified by the passage of time.

The bill authorizes for 5 years annual appropriations of \$360,000,000, so that in 5 years it would provide over \$1,800,000,000 with which to acquire these very strategic and critical materials.

I believe every Member is in favor of this legislation.

Mr. Speaker, I now yield 30 minutes to the gentleman from Illinois [Mr. ALLEN].

(Mr. SABATH asked and was given permission to revise and extend his remarks.)

Mr. ALLEN of Illinois. Mr. Speaker, this resolution makes in order the consideration of S. 752 to amend the act of June 7, 1939 (53 Stat. 811), as amended, relating to the acquisition of stocks of strategic and critical materials for national defense purposes. That after general debate, which shall be confined to the bill for 1 hour the bill shall be read for amendment under the 5-minute rule. At the conclusion of the consideration of the bill for amendment, the committee shall rise and report the bill to the House with such amendments as may have been adopted and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

This bill was unanimously reported by the Committee on Military Affairs after full and lengthy hearings. The Rules Committee likewise reported it unanimously. After a most thorough study of its purposes and values I am convinced that this body should pass it unanimously.

Mr. Speaker, I am certain that this measure for national defense purposes has the endorsement and support of the great majority of our people. I emphasize for national defense purposes because we all realize that large battleships and the most modern military equipment cannot function, cannot be replaced without a large supply of strategic and critical material. Perhaps some unthoughtful person would mention that in the event of attack from some unseen

enemy that the mining industry would commence work immediately and prove equal to the task. That is not true because it takes years for that industry to properly function in the event they are forced to close. Coming from a mining district I am convinced that they will be forced to close unless this legislation is passed. I know this will not happen because I know well that you realize that if our Nation is to be secured that we must see to it that we have a sound and healthy mining industry functioning at all times.

Mr. Speaker, I have stated that it would take years for the proper efficiency and full production in the event that we allowed our mines to close. Shut-down mines, filled with water, caved and rotted and old equipment would indeed require considerable time to bring to being. Ore reserves under such a condition would not give us good preparation in the event of war. We need stock piles that could be shipped immediately.

We must never forget that stock piles of minerals do not become obsolete. Neither do they become outmoded. There is little waste.

In the event of war, of course, manpower and machinery are of extreme importance. Stock piles and functioning mines with modern machinery would permit the assignment of tens of thousands of men to other important work.

Another thing is of grave importance. Congress must retain control over these stock piles. Congress has always done this in the past and we should follow this precedence. We have permitted the use of stock-pile materials only in war emergency. Congressional approval should be obtained before any agency should be permitted to use or release stock piles. These stock piles should be zealously guarded for the Nation's safety.

Mr. Speaker, this rule should be adopted and the bill pass without delay.

Mr. Speaker, I yield 5 minutes to the gentleman from Wisconsin [Mr. MURRAY] and ask unanimous consent that he may speak out of order.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

(Mr. MURRAY of Wisconsin asked and was given permission to revise and extend his remarks.)

Mr. MURRAY of Wisconsin. Mr. Speaker, once more I want to call to the attention of the House exactly what is taking place in this country. Yesterday I offered to yield to any Member on either side of the aisle for them to tell me if in their mind it makes sense to have one agency of our Government telling the cattle owners of this country that they could not have any feed; and to have another agency telling them they could not kill the cattle; and the propaganda agencies telling them they should not eat the meat even after the cattle are killed. One fact is obvious. If we have a drought the big packers will make a "killing" that will really be a "killing." The small slaughterer will still be under the heel of the OPA, no doubt. I would just like to know why it is that the big slaughterers who have dominated this meat picture ever since the beginning of

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with Yuma and Boulder Dam (pp. 5773-4). Rep. Cannon, Mo., served notice that the third urgent deficiency bill would be reported and considered on the same day, Wed. (p. 5781).

HOUSE - May 25

18. LABOR DISPUTES. Passed, 306-13, without amendments H.R. 6578, to provide for prompt settlement, on a temporary basis during the present emergency, of industrial disputes vitally affecting the national economy in the transition from war to peace (pp. 5862-71).
19. ADMINISTRATIVE PROCEDURE. Rep. Jennings, Tenn., criticized any amendment to the act to improve administration of justice by prescribing fair administrative procedure that would deny a citizen the right to be heard as the law provides (pp. 5853-4).
20. FOREIGN RELIEF. Received a Brown University students' petition favoring fulfillment of our obligations to feed the starving peoples of the world (p. 5874).
21. RECESSED until Mon., May 27 (p. 5874).

BILLS INTRODUCED - May 24

22. RESEARCH. S. 2248, by Sen. Bankhead, Ala., and H. R. 6548, by Rep. Flannagan, Va., to provide for further research into basic law and principles relating to agriculture. (To S. Agriculture and Forestry and H. Agriculture Committees. (pp. 5668, 5791).
23. SUGAR. S. 2249, by Sen. O'Mahoney, Wyo. (for himself and Sen. Johnson, Colo.), to amend the Sugar Act of 1937. To Finance Committee. (p. 5669.)
24. PERSONNEL; SALARIES. S. 2250, by Sen. Ellender, La. (by request) to provide a method for payment in certain Government establishments of overtime, leave, and holiday compensation on the basis of night rates pursuant to certain decisions of the Comptroller General. To Expenditures in the Executive Departments Committee. (p. 5669.)
25. LIVESTOCK AND MEAT. H.R. 6556, by Rep. Murray, Wis., would prohibit the imposition or continuation of slaughtering quotas which would not permit, in the case of individual slaughterers, the slaughtering of at least 500 head of cattle per month and 1,000 head of hogs per month. To Banking and Currency Committee. (p. 5791.) Remarks of author (pp. 5774-5).
26. SURPLUS PROPERTY; VETERANS. H.R. 6542, by Rep. Case, S. Dak., to make eligible for the acquisition of surplus property certain hospitalized members of the armed forces. To Expenditures in the Executive Departments Committee. (p. 5791).
27. SELECTIVE SERVICE. H.R. 6544, by Rep. May, Ky., (by request) to provide for the national security of the Nation by requiring that all qualified young men undergo a period of training for the common defense. (To Military Affairs Committee. (p. 5791.)
28. SUBSIDIES. H.R. 6545, by Rep. McCormack, Mass., to permit the continuation of certain subsidy payments. To Banking and Currency Committee. (p. 5791.)
29. LABOR DISPUTES. H.R. 6553, by Rep. Slaughter, Mo., to provide additional means for the settlement of labor disputes. To Labor Committee. (p. 5791.)

30. LOANS; VETERANS. H.R. 6554, by Rep. Worley, Tex., to provide that part of the interest on loans guaranteed or insured under the Servicemen's Readjustment Act be paid by the Administrator of Veterans' Affairs, so that eligible borrowers will pay interest at the rate of 1.8 percent per annum. To World War Veterans' Legislation. (p. 5791.)
31. FLOOD CONTROL. H.R. 6555, by Rep. Jennings, Tenn., to authorize a preliminary examination and survey of the Big South Fork River and its tributaries, Tenn., for flood control, for run-off and water-flow retardation, and for soil-erosion prevention. To Flood Control Committee. (p. 5791.)
32. LIVESTOCK AND MEAT. H.R. 6556, by Rep. Murray, Wis., relating to quotas with respect to the slaughtering of cattle and hogs. To Banking and Currency Committee. (p. 5791.)
33. CORPORATIONS. S. 2223 (see Digest 95) declares the policy of Congress not to grant charters by act of Congress to any corporations other than those wholly owned or controlled by the U.S. and corporations not for profit, organized for charitable, educational, patriotic, or civic-improvement purposes; and subjects corporations chartered by act of Congress to audit by GAO.
34. PUBLIC LANDS; TAXATION. S. 2239 (see Digest 96) provides that in the case of any sale of real property by the U.S., pursuant to the terms of which title is held or retained by the U.S. for any period, such property shall be taxable, subject to the paramount interest of the U.S., by the State or local public taxing unit in which such property is located and the purchaser thereof, or his successor in interest, shall be liable for the payment of any tax imposed upon such property.

BILLS INTRODUCED - May 25

35. ELECTRIFICATION. H.R. 6574, by Rep. Robinson, Utah, relating to the sale of electric power and lease of power privileges under the Reclamation Act. To Irrigation and Reclamation Committee. (p. 5874.)
36. LABOR DISPUTES. S. 2255, by Sen. Barkley (Ky.) and H.R. 6578, by Rep. McCormack (Mass.) to provide on a temporary basis during the present period of emergency for the prompt settlement of industrial disputes vitally affecting the national economy in the transition from war to peace. To S. Interstate Commerce and H. Whole House on the State of the Union Committees. (pp. 5801, 5874.)
37. MARKETING. H.J. Res. 359, by Rep. Pace, Gr., relating to peanut-marketing quotas under the Agricultural Adjustment Act. To Agriculture Committee. (p. 5874.)
38. REORGANIZATION. H. Con. Res. 154, by Rep. Pittenger, Minn., against adoption of Reorganization Plan No. 3, May 16, 1946, and H. Con. Res. 155, by Rep. Pittenger, against adoption of Reorganization Plan No. 1, May 16, 1946. To Expenditures in the Executive Departments Committees. (p. 5874.) Remarks of author (pp. A3152-3).

ITEMS IN APPENDIX - May 24

39. FOOD PRODUCTION. Extension of remarks of Rep. Harness, Ind., criticizing the lack of Government-agency cooperation to increase food production and including a newspaper article on the subject, "Uncle Sam Lets His Rich Farm Land Lie Idle" (pp. A3093-4).
40. FARM PRICES. Sen. Bushfield, S. Dak., inserted a Mitchell (S. Dak.) Daily Republic

editorial on farm prices for the period 1921-45 and criticizing a Life magazine article as "libel" on the farmers (pp. A3100-1).

Rep. Coffee, Wash., inserted a Journal of Commerce article on farm incomes particularly with reference to the Pace bill to include farm labor costs in parity (pp. A3127-8).

41. FEED; LIVESTOCK. Extension of remarks of Rep. Reed, N.Y., criticizing OPA regulations and their effect on feed, livestock and poultry, and sugar, and including a Wall Street Journal article, "Feed Famine" (pp. A3133-4).

Extension of remarks of Rep. Heselton, Mass., regarding the feed-for-livestock situation in New England and including a message to the President on the subject as a result of a conference with Secretary Anderson and others (p. A3106).

42. ST. LAWRENCE WATERWAY. Extension of remarks of Sen. Aiken, Vt., on the relation of this project to the utility investor, including an Eastman, Dillon & Co. report on the subject (pp. A3098-100).

Extension of remarks of Rep. Andresen, Minn., favoring the construction of this project (p. A3134).

43. PRICE CONTROL. Rep. Dirksen, Ill., inserted an OPA price-increase list, including meat, lumber, textiles, maple sirup, etc (pp. A3096-8).

Extension of remarks of Rep. Springer, Ind., criticizing OPA "misinformation" and including a Chicago Tribune article on the subject (p. A3107).

Extension of remarks of Rep. Arends, Ill., favoring soybean price ceilings and including the Ill. Agricultural Assn. statement on the subject (p. A3108).

Rep. Gamble, N.Y., inserted a N.Y. Sun editorial, "House Stampedes Over OPA" (p. A3123).

Rep. Lane, Mass., inserted a Lawrence (Mass.) City Council letter favoring retention of price control for one year (p. A3131).

44. FOREIGN RELIEF. Rep. Sasscer, Md., inserted a high school student's essay, "Food Plank for Peace" (p. A3109).

Rep. Gary, Va., inserted a Richmond (Va.) Ministerial Union resolution supporting any Government action, including rationing, to avert starvation abroad (p. A3114).

Extension of remarks of Rep. Hagen, Minn., favoring the plan for shipping heifers to Europe for aiding starving peoples (pp. A3129-30).

45. MINIMUM WAGES. Rep. Coffee, Wash., inserted a Seattle (Wash.) Daily Star editorial favoring the passage of the minimum-wage bill (p. A3120).

ITEMS IN APPENDIX - May 25

46. IMPORTS. Rep. Angell, Oreg., inserted sundry statements opposing the importation of edible nuts from Europe to the U.S. (p. A3144).

47. ELECTRIFICATION; RECLAMATION. Rep. Angel, Oreg., inserted an Oregonian article reporting that a Northwest Industry Revival is erasing power surplus and stating that there is justification for increased dams (pp. A3146-7).

48. ADMINISTRATIVE PROCEDURE. Rep. Hobbs, Ala., inserted Attorney General Clark's letter and statement favoring H.R. 1203, which prescribes fair administrative procedure (pp. A3148-52).

Rep. Hobbs, Ala., inserted a Justice Department memorandum on questions and answers regarding S. 7, the Administrative Procedure Act (p. A3154).

49. WHEAT PRICES. Rep. Poage, Tex., inserted a newspaper article giving Rep. Wick-
ershan's (Okla.) statement urging a higher ceiling on wheat (H. A3165).

BILL APPROVED BY THE PRESIDENT

50. FEDERAL PAY ACT 1946. S. 1415, increases the pay rates under the Classification
Act by 14% or \$250, whichever is greater, except that no rate shall be in-
creased more than 25%; increases certain "crafts, protective, custodial" em-
ployees by an additional amount; specifically provides for the regular increase
for jobs not covered by the Classification Act; provides a \$10,000 ceiling;
permits compensatory time off for the first 8 hours of overtime as well as ad-
ditional hours; clarifies provisions which GAO has interpreted to deny payment
of night differential if night work is performed on a holiday or after comple-
tion of 40 hours; provides an extra day's pay for a day of work on a holiday,
instead of $\frac{1}{2}$ day's extra pay; adjusts the rates of grades 9 and 10 to the
"crafts, protective, and custodial" service so as to restore differentials be-
tween the top grades; requires the Budget Bureau to so determine the numbers
of full-time civilian employees and part-time employment on the basis of rela-
tive needs of the departments, etc. (except War and Navy) that the aggregate
number of such employees (including full-time equivalent of man-months of
part-time employment) shall not exceed 528,975 for the quarter beginning Oct.
1946, 501,771 for the next quarter, 474,567 for the next quarter, and 447,363
after June 30, 1947 (this provision also does not apply to certain Post Office
and Veterans' Administration employees). Approved May 24 (Public Law 390,
79th Cong.).

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COMMITTEE-HEARINGS ANNOUNCEMENTS for May 27: S. Education and Labor, Federal aid in
development of community recreation programs; S. Banking and Currency, OPA exten-
sion (ex.); S. Appropriations, Interior and State, Justice, Commerce, and Judiciary
appropriation bills (ex.); H. Appropriations, Labor-Federal Security and War De-
partment appropriation bills (ex.); H. Judiciary, termination of the war.

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For supplemental information and copies of legislative material referred to, call
Ext. 4654, or send to Room 113 Adm. Arrangements may be made to be kept advised,
routinely of developments on any particular bill.

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PERMISSION TO ADDRESS THE HOUSE

Mr. VOORHIS of California. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

THE STRIKE SITUATION.

Mr. VOORHIS of California. Mr. Speaker, I most earnestly hope that the members of the two rail unions to whom the President made an appeal last night will return to their jobs before 4 o'clock. Be it remembered none of the other 18 railroad unions are on strike at all. If they do not, the only thing for a Member of Congress to do, and the thing which I do now and shall do, is to support the President of the United States in his attempt to meet this national crisis. I want to add this one word—that should legislation be requested to empower the President in time of national emergency to take over industries and to assure their continuous operation by preventing any work stoppage or strike therein, then that legislation ought to include provisions that the net earnings of that industry which may be earned during the period of Government operation should be covered into the Federal Treasury. There ought to be every element in that legislation to discourage both labor and management against getting into a situation where Government seizure will be necessary. But once an industry has come under the flag of the United States because of a break-down of all collective-bargaining efforts, then the President of the United States becomes responsible to the entire Nation for its continued operation and must be—and over the long run I am confident will be—supported under such circumstances by every group in the Nation.

PERMISSION TO ADDRESS THE HOUSE

Mr. DE LACY. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from Washington?

There was no objection.

THE STRIKE SITUATION

Mr. DE LACY. Mr. Speaker, in this serious situation that confronts us, I am confident that the Members of the two brotherhoods will declare their readiness to return to work. But I am certain that they will want to understand certain things. I am certain they will want an agreement or an understanding that further negotiations will be carried on between them and the private companies. I am certain they will want those negotiations, if they come to a fruitful result, to be retroactive. I am sure they will expect their Government to deal fairly with them if they respond to this call. After all, the Government of the United States cannot become the shield and buckler of recalcitrant, profit-hungry corporations. We cannot permit our Government to be the shield of powerful corporations against the demands of

their workers in an economic dispute. When that question is satisfactorily resolved, I am sure that the brotherhoods involved will be ready to go to work and do the job which they have done so well during the war.

The SPEAKER. The time of the gentleman from Washington has expired.

PERMISSION TO ADDRESS THE HOUSE

Mr. SLAUGHTER. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

THE STRIKE SITUATION

Mr. SLAUGHTER. Mr. Speaker, it seems to me that the gentleman who has just spoken has overlooked a very salient feature in this crisis when he talks about a struggle between unions and corporations. The strike that is now in progress is not a strike against any corporation. It is a strike against the President of the United States, acting as the servant of all the people. It is a strike against the people of the United States, and it is a strike against the sovereign power of the United States.

EXTENSION OF REMARKS

Mr. KEFAUVER asked and was given permission to extend his remarks in the Record and include an address by Judge Ewin Davis, Chairman of the Federal Trade Commission.

BROADCASTING PROCEEDINGS OF THE HOUSE

Mr. DIRKSEN. Mr. Speaker, I would like to address a parliamentary inquiry to the Chair. While I am not advised as to what may take place this afternoon or whether the House will consider legislation sometime after the President's message, would it be possible perhaps to preserve the microphones in the Chamber, because I am satisfied the country would be deeply interested in any discussion or debate that may take place here. I very respectfully address that inquiry to the Chair.

The SPEAKER. There is no rule under which proceedings of the House of Representatives can be broadcast except on special occasions.

PERMISSION TO ADDRESS THE HOUSE

Mr. GROSS. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

THE STRIKE SITUATION

Mr. GROSS. Mr. Speaker, whenever a doctor is called into a home to help a sick patient, if he is honest and if he wants to help the patient, the first thing he does is look for the cause; and then he begins by removing the cause of the ailment. After the cause is removed, nature generally takes care of itself. If we want to help the patient we have now, we will look for the cause and we will find it in the Wagner National Labor

Relations Act. It does not make any difference what suggestion the President makes for immediate relief, it will just be a shot in the arm; it will be like a dose of aspirin. Until we revise the Wagner Labor Relations Act, which is the cause of all our present troubles, we will have no definite relief.

EXTENSION OF REMARKS

Mr. JENNINGS asked and was given permission to extend his remarks in the Record and include an editorial and two letters.

PERMISSION TO ADDRESS THE HOUSE

Mr. JENNINGS. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

PRACTICE BEFORE FEDERAL AGENCIES

Mr. JENNINGS. Mr. Speaker, on Friday, May 24, the House considered and passed an act to improve the administration of justice by prescribing fair administrative practice. In my speech on the floor of the House favoring the passage of this act, I pointed out that this measure is a step in the right direction to protect the rights, liberty, and property of the citizens of this country against the steady and unlawful oppression at the hands of Washington bureaucrats. The thousands of men and women in Washington who have disregarded laws passed by Congress, and set themselves up as lawmakers, and who, in many instances, under rules and regulations they have promulgated, act as accuser, prosecutor, judge, jury, and executioner of the citizen, have heretofore been a law unto themselves.

This act is similar to one favorably acted on by the House Committee on Judiciary. As a member of this committee, I, along with the other members of the committee carefully considered each and every section and provision of the act as finally passed.

Section 6 of the act, provides, among other things, that—

Any person compelled to appear in person before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. Every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in any agency proceeding.

On the consideration of this measure the gentleman from Tennessee [Mr. KEFAUVER] offered and spoke in favor of the following amendment:

On page 30, line 15, after the period insert "any member of the bar who is in good standing and who has been admitted to the bar of the Supreme Court of the United States or of the highest court of the State of his or her residence shall be eligible to practice before any agency: *Provided, however,* That an agency shall for good cause be authorized by order to suspend or deny the right to practice before such agency."

I opposed this amendment and spoke against it. The House rejected it, and properly so.

There are many cases coming before these Federal agencies where a competent businessman or a certified public accountant can render a citizen services just as valuable as an attorney could render. And in case of an accounting much more valuable.

And certainly no agency should have the right to refuse to hear any competent representative of a citizen who has been hauled from his home in some distant State to fight for his rights before a bureaucrat in Washington.

In a reply he made to what I had to say in opposition to his proposed amendment which was defeated the gentleman from Tennessee [Mr. KEFAUVER] used this language:

I happen to be a member of the subcommittee and talked about this proposal with the chairman of the subcommittee. The gentleman from Tennessee, not being a member of the committee, of course would not know about that, and I am sorry that he opposes the amendment.

I did not then nor do I know now what the gentleman from Tennessee [Mr. KEFAUVER] said in a conversation he had with the chairman of the subcommittee. I am in no way interested in that. But I do know what occurred when the House Committee on the Judiciary considered this measure. And, what is important, I was present as a Member of the House when this proposed amendment that would have prevented a citizen from selecting and employing a competent representative to appear with or for him before a Washington agency or its representative to aid and defend him against some one of the thousands of persecutions, and too often persecutions, with which the people of this country are being harassed.

Certain it is, no bureaucrat should have the power to deny the citizen the right to be heard as the law of the land provides.

PERMISSION TO ADDRESS THE HOUSE

Mr. BENDER. Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

The SPEAKER. Is there objection to the request of the gentleman from Ohio? There was no objection.

THE DOMESTIC SITUATION

Mr. BENDER. Mr. Speaker, I was just now called on the long-distance telephone. A nephew of mine has landed in New York after having spent 2 years in Saipan. He said, "Uncle George, I just came in. I would like to get home and I cannot get transportation." I said, "That is too bad. You will have to wait there until we can make arrangements to send for you." He said, "Isn't that a hell of a country to come home to, when you cannot get home after you land in New York?" He said, "Will you have a big steak for me when I get back to Cleveland?" I said, "We cannot get any steaks in Cleveland." He said, "Isn't that a hell of a note?" I said, "Yes, but what do you expect when a majority of the people have been voting the country that way for the last 14 years?"

EXTENSION OF REMARKS

Mrs. ROGERS of Massachusetts asked and was given permission to extend her

remarks in the RECORD, and include a petition of the Arlington Machine Workers against the strikes.

PERMISSION TO ADDRESS THE HOUSE

Mr. VURSELL. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

THE STRIKE SITUATION

Mr. VURSELL. Mr. Speaker, we have reached another crisis. At 4 o'clock this afternoon the President of the United States will address the Congress. I presume his address will deal with what may be necessary to straighten out the industrial disputes of the Nation.

May I call the attention of the House to the fact that 3 months ago 258 Members of this House passed legislation in the hope of preventing the very crisis that is now upon us. We were criticized throughout the Nation when we attempted to pass legislation that would seek to obviate the necessity for what is happening in the Nation, and the necessity that will bring the President to the floor of the House this afternoon.

And may I point out that the President and his administration leaders opposed the legislation passed by the House which sought to define and protect the rights of labor, business, and such legislation as would protect the millions of people who make up the public. Had the President supported this legislation, doubtless the Senate would have passed it and the crisis would not be upon us today where we will be almost compelled, because of this crisis, to pass legislation without due consideration.

For 12 years the administration in power, with a majority in both branches of the Congress, by playing politics with the labor leaders for their votes at election time have been digging the rather deep hole the administration finds itself in now. Now, they call upon the Members of this House who have had the wisdom and courage to courageously meet the question and try to solve it before the economy of the Nation has been broken down with strikes, to throw a rope down in the hole to pull the administration out.

It is interesting to note that the President could and should have taken action 6 months ago so that the Congress could deliberately study and pass comprehensive legislation, fair to labor, business, and the entire Nation. This he did not do for the very obvious reason, the fear of offending the labor vote.

If the President would have made the speech he made last night 30 days ago, it would have prevented the break-down of the business of the Nation and saved a billion dollars the Nation badly needs in goods and service. The matter was allowed to drift with the results that the entire Nation is aroused and the people are greatly inconvenienced and punished.

It is to be hoped that the people clearly see through this picture so they may

place the responsibility and the blame where it properly belongs.

The SPEAKER. The time of the gentleman from Illinois has expired.

PERMISSION TO ADDRESS THE HOUSE

Mr. CRAWFORD. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and not revise my remarks.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

THE STRIKE SITUATION

Mr. CRAWFORD. Mr. Speaker, a railroad strike is a very disastrous thing if it lasts very long. So is a coal strike. But this country rolls on automobile wheels and truck wheels. I became rather concerned about the situation when a combination was formed which prevented the production and shipment of automobiles in interstate commerce. Now, this is just another chapter in the same book, perhaps a little more entertaining to all of us. If this particular strike is settled between now and 4 o'clock, what are we going to do about the general situation? I am of the opinion that there will be waves of strikes going on across this country in the months to come unless we can do something to save matters. So I hope that if the strike is settled between now and 4 o'clock the President of the United States will not come up here and call off consideration of this whole proposition.

The SPEAKER. The time of the gentleman from Michigan has expired.

CALL OF THE HOUSE

Mr. KEFAUVER. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

Mr. McCORMACK. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The Clerk called the roll, and the following Members failed to answer to their names:

[Roll No. 133]

Adams	Dawson	Hand
Allen, Ill.	Delaney,	Harris
Anderson, Calif.	James J.	Hart
Andrews, N. Y.	Delaney,	Hartley
Arcnds	John J.	Havener
Bailey	D'Ewart	Healy
Baldwin, Md.	Dingell	Heffernan
Baldwin, N. Y.	Domeneaux	Hendricks
Barden	Douglas, Calif.	Hinshaw
Barrett, Pa.	Drewry	Hoffman
Barry	Durham	Hook
Beall	Dworshak	Howell
Bennett, Mo.	Eaton	Izac
Biemiller	Elliot	Jarman
Bolton	Ellis	Johnson, Ind.
Bonner	Engle, Calif.	Kearney
Boren	Fernandez	Kelly, Ill.
Boykin	Flannagan	Keogh
Bradley, Pa.	Flood	Kerr
Brumbaugh	Folger	King
Buckley	Fuller	Kinzer
Bunker	Gamble	Kiryan
Byrne, N. Y.	Gary	Klein
Cannon, Fla.	Gathings	Knutson
Carlson	Gearhart	Kunkel
Case, N. J.	Geelan	LaFollette
Celler	Gerlach	Latham
Chapman	Gifford	Lea
Clark	Gillespie	LeCompte
Clippinger	Granahan	Lesinski
Cochran	Green	Ludlow
Cooley	Hagen	Lynch
Cravens	Hall,	McGehee
Curley	Leonard W.	McGlinchey
Davis	Halleck	McGregor

ment division. The industrial load increase is about the same as the general use increase after a sharp rise in 1946 and 1947, reflecting return of aluminum plants to lines.

The aluminum plants alone, when in full operation, use 650,000 kilowatts of power—more than the total output of Bonneville Dam's 10 generators. Other electrometallurgical plants built in this area during the war are expected to be converted eventually to peacetime use.

Studies of electrometallurgical and electrochemical industries not presently represented in the northwest indicate that the electric power on which they depend is becoming scarcer in regions where they are now located. Availability of low-cost power here is expected to bring many of them here. The total load of those which have already expressed interest in the northwest would exceed 1,000,000 kilowatts.

SUPPLY INCREASES DEMAND

Industrial demand depends to a great extent upon availability of power. If there were serious doubts that the Northwest's hydro plants could not supply the energy for a specific industry, it would locate elsewhere, or at least delay its location here until a steady supply of power could be assured.

Wide and insistent public demand for electrical house heating is another factor which can be expected to heavily increase the drain upon Bonneville and Grand Coulee in the future. Bonneville estimates that even without promotion a load of at least 100,000 kilowatts for this purpose by 1953 is a reasonable expectation. No effort is being made to increase use of electricity for house heating until technical problems are solved.

Irrigation pumping load and railroad electrification are small but important factors.

Now where is the power coming from?

The broken line on the accompanying graph indicates the total developed and proposed power supply. It includes both the power developed and to be developed by the big Federal generators and by non-Federal utilities. The latter, including both private companies and municipal operations, is represented in the cross-hatched area at the bottom of the graph and in steam generating plants.

1948 CRISIS PREDICTED

The broken line, which shows Bonneville's preliminary estimate of what the Northwest's total power supply will be, begins dropping below the solid line, which indicates estimated power requirements in December 1948.

This does not necessarily mean that there will be an extreme power shortage, but it means that there very easily could be. Estimates of how much power can be developed in a hydroelectric system must necessarily be based on the least that can be expected. That is, on the lowest water year for the Columbia River. The lower the water, the less power can be generated, and no sensible business can contract to sell what it may not produce.

Should the years between 1948 and the jump in power supply which will come when the first three generators of McNary Dam start whirling be reasonably high-water years the broken line would probably be above the solid one.

EXPANSION TRACED

The broken line starts climbing in 1947 to keep within range of the increasing power requirements. This increase in power supply is expected as new generators are installed at Grand Coulee Dam. The first is to be installed in 1947. Two go in in 1948, two more in 1949, and three in 1950.

That will make Grand Coulee Dam's generators number 15. But even those installations will not be sufficient, providing Bonneville's estimates of the Northwest's growing thirst for energy are reasonably accurate.

Expected also to be activated in 1950 are the first two generators from Hungry Horse

Dam, to be built on upper Flathead Lake in Montana and connected with the Bonneville transmission system, and the one generator of Detroit Dam on the North Santiam River.

Still the power demand and power supply will be uncomfortably close until the first 3 of McNary Dam's ultimate 10 generators go into service in December 1951—If dam construction keeps pace with schedule and that projected date can be met.

CONGRESS ACTION NEEDED

The pressure will be off and a comfortable margin between supply and demand existing as three more generators go into service at McNary Dam during 1952 and the first three of the generators at Foster Creek Dam, proposed for construction downstream from Grand Coulee, are activated. Again there is a big "if," however, for Foster Creek Dam has not yet been authorized by Congress, let alone provided for in congressional appropriations.

All in all, the Northwest's power problem appears, at least from the Bonneville standpoint, to be a race between thirsting power users of the Northwest on one hand and the dam builders, the generator builders, and the Rivers and Harbors and Appropriations Committees of the National Congress.

Preliminary generator installation schedule

Date	Dam	Kilowatts
November 1947.....	Grand Coulee 7.....	108,000
February 1948.....	Grand Coulee 8.....	108,000
May 1948.....	Grand Coulee 9.....	108,000
April 1949.....	Grand Coulee 10.....	120,000
July 1949.....	Grand Coulee 11.....	120,000
October 1949.....	Grand Coulee 12.....	120,000
April 1950.....	Grand Coulee 13.....	120,000
July 1950.....	Grand Coulee 14.....	120,000
	Hungry Horse 1.....	47,000
	Detroit 1.....	45,000
October 1950.....	Grand Coulee 15.....	120,000
	Hungry Horse 2.....	47,000
October 1951.....	Hungry Horse 3.....	47,000
December 1951.....	McNary 1.....	69,000
	McNary 2.....	69,000
	McNary 3.....	69,000
April 1952.....	McNary 4.....	69,000
August 1952.....	McNary 5.....	69,000
October 1952.....	Foster Creek 1.....	64,000
	Foster Creek 2.....	64,000
	Foster Creek 3.....	64,000
December 1952.....	McNary 6.....	69,000
July 1953.....	McNary 7.....	69,000
October 1953.....	Foster Creek 4.....	64,000
	Foster Creek 5.....	64,000
December 1953.....	McNary 8.....	69,000
July 1954.....	McNary 9.....	69,000
October 1954.....	Foster Creek 6.....	64,000
	Foster Creek 7.....	64,000
July 1955.....	McNary 10.....	69,000
October 1955.....	Foster Creek 8.....	64,000
	Foster Creek 9.....	64,000

¹ Bids for new generators to be built for Grand Coulee will call for nameplate ratings of 120,000 kilowatts. Originally 108,000-kilowatt generators had been planned. Overload performance of installed generators indicates feasibility of the larger units.

² Original estimate. Installation of units of either 58,000 or 62,000 kilowatts is now being considered.

³ Tentative estimate of rating of units.

The Railroad Strike

EXTENSION OF REMARKS

OF

HON. JAY LeFEVRE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, May 25, 1946

Mr. LEFEVRE. Mr. Speaker, I leave to extend my remarks in the RECORD, I include the following editorial from today's New York Herald Tribune:

HOW SACRED?

As these lines are written there has been no settlement of the railroad strike that has

paralyzed the country. But even if a so-called settlement should arrive and provide the relief we all crave, it can have no basic significance. The fact that we Americans must face is that two men, both labor leaders in key public services, have been in a position to dictate, temporarily though it may be, the fortunes, health, and national honor of 140,000,000 people—to say nothing of lives around the world.

It would be easy to become hysterical on the subject of such tyranny, exercised by officials privately clothed with power by a minority even of railway workers. Mr. Alvanley Johnston and Mr. A. F. Whitney represent only 2 of the 20 brotherhoods in the railway labor field. The 18 others, as well as the operators, agreed Thursday to abide by the formula for settlement presented at the President's conference. These two held out.

The most discouraging feature has to do with the unions involved (among the most conservative and responsible in the country) and the law under which they operate. That law—the Railway Labor Act—has for the 20 years since its enactment been considered a model of labor legislation for the simple reason that until Thursday it has saved us from the suffering we have just experienced. It is a law which the railway unions themselves promoted. Now it has failed of its purpose and the country gropes in the dark for anything better that will hold labor in check while preserving its right to strike.

But how sacred is this right to strike? Here is the fundamental question which requires reexamination. Does the right to strike come before the right to live or to work, or the right of a great nation to play its part in the world? According to New Deal philosophy the answer is "Yes." But common sense surely suggests a different answer. We urge that henceforward in this land of the free and the brave the right to strike be reconsidered in the light of its relative importance and placed in its proper perspective among the essential rights of man.

Chester Bowles and Paul Porter Are Shoving the American People Down the Road to Famine and Black Markets

EXTENSION OF REMARKS

OF

HON. JOHN JENNINGS, JR.

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Saturday, May 25, 1946

Mr. JENNINGS. Mr. Speaker, that OPA is continuing to deprive the people of this country of meat, bread, flour, meal, poultry and dairy feed, and that the senseless orders, rules, and regulations promulgated by this agency, Mr. Paul Porter and Mr. Chester Bowles are driving these necessities of life into the black market is shown by the editorial from New York Times of May 20, the letter of Mr. Horace H. Justus, of Knoxville, Tenn., and the letter of Mr. Clifford Marcum, secretary of the Progressive League of the First District of Scott County.

This editorial from the Times, and these letters from these fine and representative citizens of my district are but three of the daily protests coming to my office that condemn the OPA and the two men who are daily and stubbornly bringing the law-abiding people of this country face to face with famine.

[From the New York Times of May 20, 1946]

CRISIS IN BEEF

With about 75 percent of the Nation's beef at retail levels having passed to the control of black marketers, the time is at hand when definite steps should be taken to restore that essential product to legitimate channels of trade if one of the world's finest food distributing systems is not to be damaged irreparably. To supply the country with adequate supplies of fresh beef a vast and complicated system has evolved. It includes the range where the cattle are bred, the feed-lot operator who produces about two-thirds of the meat sold by the retail butcher, and the packer with his fleet of refrigerator cars and numerous branches through which the beef is distributed to retail outlets.

Now under the impact of rulings by the Office of Price Administration this system is being shattered. The range still is operating at capacity. But the feed-lot operator cannot operate profitably at the ceiling price. He is either out of business or selling the cattle he feeds above the ceiling in the black market. The old-line packer is able to buy only a fraction of the cattle needed at the ceiling and is processing only about 25 percent of the former quantity of beef. This 25 percent is the only beef over which OPA now has any control.

When controls were first being considered, the meat industry was fearful of just such developments. There was no shortage at that time. In fact, an artificial shortage through legitimate channels was created by the initial restrictive measures that OPA put into effect. Moreover, immediately OPA assumed control over meat, the black market started to function. Since then it has expanded steadily. Today OPA has control of no more than 25 percent of the beef reaching retail outlets.

It is improbable that OPA ever will be able to recover the control it has already lost. From past experience with prohibition, it is doubtful if control could be recovered even with the establishment of a huge policing force costing millions of dollars. It is problematical, in fact, with black marketers now so well entrenched, whether OPA will be able to retain even the slight hold it now has. Meanwhile the Nation's health is being imperiled by the increasing quantities of insanitary beef from black markets.

This is why many of those who have studied the meat problem now believe that the only solution lies in eliminating meat controls so that free competitive forces can again assert themselves. In that way, they argue, the makeshift operators soon would be eliminated and meat returned to normal distributing channels. Since operations through legitimate channels would be more efficient, they believe that prices would adjust themselves at lower levels than those now being paid for the greater part of the meat that is available.

JUSTUS & Co.,
May 15, 1946.

HON. JOHN W. JENNINGS,
Member Congress,
Washington, D. C.

DEAR CONGRESSMAN: You no doubt are aware of the serious food situation which exists throughout this section, but you could not appreciate the feeling of our customers who come to our store to purchase feed for chickens and cows. We have had an order placed with the Ubiko Milling Co., Cincinnati, Ohio, for feed for 30 days. They advise us they cannot fill this order because they cannot buy corn to make livestock or poultry feed. As I understand it the Government is paying 30 cents per bushel more for corn than this feed mill is allowed to pay under OPA. It is quite natural no one will sell them anything at 30 cents less than the Government pays.

We have had a dozen people in our store today that tell us they cannot buy a pound of starting feed for baby chicks in the city of Knoxville. We operate a hatchery in connection with our business and at present have about 10,000 eggs in our incubator. In normal times we sell from 800 to 1,000 chicks per day at this season of the year. I am writing this letter about 3 p. m. and we have sold exactly 31 chicks today. We have approximately 3,000 in our battery for sale and had to go 60 miles from Knoxville or to Rogersville yesterday to find enough feed to keep these chicks alive. We have had any number of people who tell us they are going to sell off all their poultry—some of them will never be raised large enough for human consumption.

Sincerely yours,

JUSTUS & Co.,
HORACE N. JUSTUS,
President.

THE PROGRESSIVE LEAGUE,
FIRST CIVIL DISTRICT,
SCOTT COUNTY, TENN.,
Pioneer, Tenn., May 21, 1946.

HON. JOHN JENNINGS, JR.,
Washington, D. C.

DEAR SIR: As secretary of the Progressive League of the First District of Scott County, Tenn., I am writing you regarding the flour and feed situation. According to reports our Government is paying 30 cents more per bushel for grain than they will allow the flour and feed milling companies to pay, and sending all this to foreign countries, causing our mills to shut down, and we cannot buy bread and feed. We ask you as our Representative to protest this action.

We are willing to divide, but we are not willing to give all. We cannot work without bread, meat, and other food we are hardly able to get.

Respectfully yours,
THE PROGRESSIVE LEAGUE OF THE
FIRST DISTRICT OF SCOTT COUNTY,
CLIFFORD MARCUM, Secretary.

Administrative Procedure Act

EXTENSION OF REMARKS OF

HON. SAM HOBBS

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Saturday, May 25, 1946

Mr. HOBBS. Mr. Speaker, the leadership of the great chairman of the House Committee on the Judiciary, Hon. HATTON W. SUMNERS, has again been demonstrated in the history of the pending measure. He has worked with everyone of those who have been interested for the last 10 years. Several of the bills that have been precursors of the present one have been introduced by him. His sage advice and his encouraging example have been helpful throughout the long fight.

The letter from Attorney General Clark, of October 19, 1945, while referring specifically to one of Judge SUMNERS' bills, needs only one slight change to make it apply perfectly to the bill of the moment. That change is: the reference to section 3 (a) (4) should read 3 (a) (3), since the latest amendments of the House Committee.

With such change in mind the letter speaks as of today, and it is so helpful

that I take pleasure in including it as the major part of these remarks:

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., October 19, 1945.

HON. HATTON SUMNERS,
Chairman, House Judiciary Committee,
House of Representatives,
Washington, D. C.

MY DEAR MR. CHAIRMAN: You have asked me to comment on the substitute draft of H. R. 1203, a bill to improve the administration of justice by prescribing fair administrative procedure, in the form in which it appears in the revised committee print issued October 5, 1945, and referred to in your recent letter.

I appreciate the opportunity to comment on this proposed legislation.

For more than a decade there has been pending in the Congress legislation in one form or another designed to deal horizontally with the subject of administrative procedure, so as to overcome the confusion which inevitably has resulted from leaving to basic agency statutes the prescription of the procedures to be followed or, in many instances, the delegation of authority to agencies to prescribe their own procedure. Previous attempts to enact general procedural legislation have been unsuccessful generally because they failed to recognize the significant and inherent differences between the tasks of courts and those of administrative agencies or because, in their zeal for simplicity and uniformity, they proposed too narrow and rigid a mold.

Nevertheless, the goal toward which these efforts have been directed is, in my opinion, worth while. Despite difficulties of draftsmanship, I believe that over-all procedural legislation is possible and desirable. The administrative process is now well developed. It has been subject in recent years to the most intensive and informed study—by various congressional committees, by the Attorney General's Committee on Administrative Procedure, by organizations such as the American Bar Association, and by many individual practitioners and legal scholars. We have in general—as we did not have until fairly recently—the materials and facts at hand. I think the time is ripe for some measure of control and prescription by legislation. I cannot agree that there is anything inherent in the subject of administrative procedures, however complex it may be, which defies workable codification.

Since the original introduction of H. R. 1203, I understand that opportunity has been afforded to public and private interests to study its provisions and to suggest amendments. The agencies of the Government primarily concerned have been consulted and their views considered. In particular, I am happy to note that your committee and the Senate Committee on the Judiciary, in an effort to reconcile the views of the interested parties, have consulted officers of this Department and experts in administrative law made available by this Department.

The revised committee print issued October 5, 1945, seems to me to achieve a considerable degree of reconciliation between the views expressed by the various Government agencies and the views of the proponents of the legislation. The bill in its present form requires administrative agencies to publish or make available to the public an increased measure of information concerning their organization, functions and procedures. It gives to that portion of the public which is to be affected by administrative regulations an opportunity to express its views before the regulations become effective. It prescribes, in instances in which existing statutes afford opportunity for hearing in connection with the formulation and issuance of administrative rules and orders, the procedures which shall govern

such hearings. It provides for the selection of hearing officers on a basis designed to obtain highly qualified and impartial personnel and to insure their security of tenure. It also restates the law governing judicial review of administrative action.

The bill appears to offer a hopeful prospect of achieving reasonable uniformity and fairness in administrative procedures without at the same time interfering unduly with the efficient and economical operation of the Government. Insofar as possible, the bill recognizes the needs of individual agencies by appropriate exemption of certain of their functions.

After reviewing the committee print, therefore, I have concluded that this Department should recommend its enactment.

My conclusion as to the workability of the proposed legislation rests on my belief that the provisions of the bill can and should be construed reasonably and in a sense which will fairly balance the requirements and interests of private persons and governmental agencies. I think it may be advisable for me to attach to this report an appendix discussing the principal provisions of the bill. This may serve to clarify some of the essential issues, and may assist the committee in evaluating the impact of the bill on public and private interests.

I am advised by the Acting Director of the Bureau of the Budget that while there would be no objection to the submission of this report, he questions the appropriateness of the inclusion of the words "independently of agency recommendations or ratings," appearing after the word "Examiners shall receive compensation prescribed by the [Civil Service] Commission" in section 11 of the bill, inasmuch as he deems it highly desirable that agency recommendations and ratings be fully considered by the Commission.

With kind personal regards.

Sincerely yours,

TOM CLARK,
Attorney General.

APPENDIX TO ATTORNEY GENERAL'S STATEMENT
REGARDING REVISED COMMITTEE PRINT OF
OCTOBER 5, 1945

Section 2: The definitions given in section 2 are of very broad character. It is believed, however, that this scope of definition will not be found to have any unexpected or unfortunate consequences in particular cases, inasmuch as the operative sections of the act are themselves carefully limited.

"Courts" includes the Tax Court, Court of Customs and Patent Appeals, the Court of Claims and similar courts. This act does not apply to their procedure nor affect the requirement of resort thereto.

In section 2 (a) the words "agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them" are intended to refer to the following, among others: National War Labor Board and the National Railroad Adjustment Board.

In section 2 (c) the phrase "the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances" etc., is not, of course, intended to be an exhaustive enumeration of the types of subject matter of rule making. Specification of these particular subjects is deemed desirable, however, because there is no unanimity of recognition that they are, in fact, rule making. The phrase "for the future" is designed to differentiate, for example, between the process of prescribing rates for the future and the process of determining the lawfulness of rates charged in the past. The latter, of course, is "adjudication" and not "rule making." (*Arizona Grocery Co. v. Atchison, Topeka, and Santa Fe Railway Co.* (284 U. S. 379).)

The definitions of "rule making" and "adjudication," set forth in subsections (c)

and (d) of section 2, are especially significant. The basic scheme underlying this legislation is to classify all administrative proceedings into these two categories. The pattern is familiar to those who have examined the various proposals for administrative procedure legislation which have been introduced during the past few years; it appears also in the recommendations of the Attorney General's Committee on Administrative Procedure. Proceedings are classed as rule making under this act not merely because, like the legislative process, they result in regulations of general applicability but also because they involve subject matter demanding judgments based on technical knowledge and experience. As defined in subsection (c), for example, rule making includes not only the formulation of rules of general applicability, but also the formulation of agency action whether of general or particular applicability, relating to the types of subject matter enumerated in subsection (c). In many instances of adjudication, on the other hand, the accusatory element is strong, and individual compliance or behavior is challenged; in such cases, special procedural safeguards should be provided to insure fair judgments on the facts as they may properly appear of record. The statute carefully differentiates between these two basically different classes of proceedings so as to avoid, on the one hand, too cumbersome a procedure and to require, on the other hand, an adequate procedure.

Section 3: This section applies to all agencies covered by the act, including war agencies and war functions. The exception of any function of the United States requiring secrecy in the public interest is intended to cover (in addition to military, naval, and foreign-affairs functions) the confidential operations of the Secret Service, the Federal Bureau of Investigation, United States attorneys, and other prosecuting agencies, as well as the confidential functions of any other agency.

Section 3 (a), by requiring publication of certain classes of information in the Federal Register, is not intended to repeal the Federal Register Act (44 U. S. C. 301, et seq.) but simply to require the publication of certain additional material.

Section 3 (a) (4) is intended to include (in addition to substantive rules) only such statements of general policy or interpretations as the agency believes may be formulated with a sufficient degree of definiteness and completeness to warrant their publication for the guidance of the public.

Section 3 (b) is designed to make available all final opinions or orders in the adjudication of cases. Even here material may be held confidential if the agency finds good cause. This confidential material, however, should not be cited as a precedent. If it is desired to rely upon the citation of confidential material, the agency should first make available some abstract of the confidential material in such form as will show the principles relied upon without revealing the confidential facts.

Section 3 (c) is not intended to open up Government files for general inspection. What is intended is that the agencies, to the degree of specificity practicable, shall classify its material in terms of whether or not it is confidential in character and shall set forth in published rules the information or type of material which is confidential and that which is not.

Section 4: The term "naval" in the first exception clause is intended to include the defense functions of the Coast Guard and the Bureau of Marine Inspection and Navigation.

Section 4 (b), in requiring the publication of a concise general statement of the basis and purpose of rules made without formal hearing, is not intended to require an elaborate analysis of rules or of the detailed considerations upon which they are based but

is designed to enable the public to obtain a general idea of the purpose of, and a statement of the basic justification for, the rules. The requirement would also service much the same function as the whereas clauses which are now customarily found in the preambles of Executive orders.

Section 4 (c): This subsection is not intended to hamper the agencies in cases in which there is good cause for putting a rule into effect immediately, or at some time earlier than 30 days. The section requires, however, that where an earlier effective date is desired the agency should make a finding of good cause therefor and publish its finding along with the rule.

Section 4 (d) simply permits any interested person to petition an agency for the issuance, amendment, or repeal of a rule. It requires the reception and consideration of petitions, but does not compel an agency to undertake any rule-making procedure merely because a petition is filed.

SEC. 5. Subject to the six exceptions set forth at the commencement of the section, section 5 applies to administrative adjudications "required by statute to be determined on the record after opportunity for an agency hearing." It is thus limited to cases in which the Congress has specifically required a certain type of hearing. The section has no application to rule making, as defined in section 2 (c). The section does apply, however, to licensing with the exception that section 5 (c), relating to the separation of functions, does not apply in determining applications for initial licenses, i. e., original licenses as contradistinguished from renewals or amendments of existing licenses.

If a case falls within one of the six exceptions listed at the opening of section 5, no provision of section 5 has any application to that case; such a case would be governed by the requirements of other existing statutes.

The first exception is intended to exempt, among other matters, certain types of reparation orders assessing damages, such as are issued by the Interstate Commerce Commission and the Secretary of Agriculture, since such orders are admissible only as prima facie evidence in court upon attempted enforcement proceedings or (at least in the case of reparation orders issued by the Secretary of Agriculture under the Perishable Agricultural Commodities Act) on the appeal of the losing party. Reparation orders involving in part an administrative determination of the reasonableness of rates in the past so far as they are not subject to trial de novo would be subject to the provisions of section 5 generally but they have been specifically exempted from the segregation provisions of section 5 (c). In the fourth exception the term "naval" is intended to include adjudicative defense functions of the Coast Guard and the Bureau of Marine Inspection and Navigation, where such functions pertain to national defense.

Section 5 (a) is intended to state minimum requirements for the giving of notice to persons who under existing law are entitled to notice of an agency hearing in a statutory adjudication. While in most types of proceedings all of the information required to be given in clauses (1), (2), and (3) may be included in the "notice of hearing" or other moving paper, in many instances the agency or other moving party may not be in position to set forth all of such information in the moving paper, or perhaps not even in advance of the hearing, especially the "matters of fact and law asserted." The first sentence of this subsection merely requires that the information specified should be given as soon as it can be set forth and, in any event, in a sufficiently timely manner as to afford those entitled to the information an adequate opportunity to meet it. The second sentence complements the first and requires agencies and other parties promptly to reply to mov-

ing papers of private persons or permits agencies to require responsive pleading in any proceedings.

Section 5 (c) applies only to the class of adjudicatory proceedings included within the scope of section 5, i. e., cases of adjudication required by statute to be determined after opportunity for an agency hearing, and then not falling within one of the six excepted situations listed at the opening of section 5. As explained in the comments with respect to section 5 generally, this subsection does not apply either in proceedings to determine applications for initial licenses or in those to determine the reasonableness of rates in the past.

In the cases to which this subsection is applicable, if the informal procedures described in section 5 (b) (1) are not appropriate or have failed, a hearing is to be held as provided in sections 7 and 8. At such hearing the same officers who preside at the reception of evidence pursuant to section 7 shall make the recommended decision or initial decision "required by section 8" except where such officers become unavailable to the agency. The reference to section 8 is significant. Section 8 (a) provides that, in cases in which the agency has not presided at the reception of the evidence, the officer who presided (or, in cases not subject to subsec. (c) of sec. 5, an officer or officers' qualified to preside at hearings pursuant to sec. 7) shall make the initial or recommended decision, as the case may be. It is plain, therefore, that, in cases subject to section 5 (c), only the officer who presided at the hearing (unless he is unavailable for reasons beyond the agency's control) is eligible to make the initial or recommended decision, as the case may be.

This subsection further provides that in the adjudicatory hearings covered by it no presiding officer shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate (except to the extent required for the disposition of ex parte matters as authorized by law). The term "fact in issue" is used in its technical, litigious sense.

In most of the agencies which conduct adjudicative proceedings of the types subject to this subsection, the examiners are placed in organizational units apart from those to which the investigative or prosecuting personnel are assigned. Under this subsection such an arrangement will become operative in all such agencies. Further, in the adjudicatory cases covered by section 5 (c), no officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency in any case shall, in that or a factually related case, participate or advise in the decision, recommended decision or agency review pursuant to section 8 except as witness or counsel in public proceedings. However, section 5 (c) does not apply to the agency itself or, in the case of a multi-headed agency, any member thereof. It would not preclude, for example, a member of the Interstate Commerce Commission personally conducting or supervising an investigation and subsequently participating in the determination of the agency action arising out of such investigation.

Section 5 (c), applying as it does only to casts of adjudication (except determining applications for initial licenses or determining reasonableness of rates in the past) within the scope of section 5 generally, has no application whatever to rule making, as defined in section 2 (c). As explained in the comment on section 2 (c), rule making includes a wide variety of subject matters, and within the scope of those matters it is not limited to the formulation of rules of general applicability but includes also the formulation of agency action whether of general or particular application, for example, the reorganization of a particular company.

Section 5 (d): Within the scope of section 5 (i. e., in cases of adjudication re-

quired by statute to be determined on the record after opportunity for an agency hearing, subject to certain exceptions) the agency is authorized to issue a declaratory order to terminate a controversy or remove uncertainty. Where declaratory orders are found inappropriate to the subject matter, no agency is required to issue them.

Section 6: Subsection (a), in stating a right of appearance for the purpose of settling or informally determining the matter in controversy, would not obtain if the agency properly determines that the responsible conduct of public business does not permit. It may be necessary, for example, to set the matter down for public hearing without preliminary discussion because a statute or the subject matter or the special circumstances so require.

It is not intended by this provision to require the agency to give notice to all interested persons, unless such notice is otherwise required by law.

This subsection does not deal with, or in any way qualify, the present power of an agency to regulate practice at its bar. It expressly provides, moreover, that nothing in the act shall be construed either to grant or to deny the right of nonlawyers to appear before agencies in a representative capacity. Control over this matter remains in the respective agencies.

Section 6 (b): The first sentence states existing law. The second sentence is new.

Section 6 (c): The first sentence entitles a party to a subpoena upon a statement or showing of general relevance and reasonable scope of the evidence sought. The second sentence is intended to state the existing law with respect to the judicial enforcement of subpoenas.

Section 6 (d): The statement of grounds required herein will be very simple, as contrasted with the more elaborate findings which are customarily issued to support an order.

Section 7: This section applies in those cases on statutory hearing which are required by sections 4 and 5 to be conducted pursuant to section 7. Subject to the numerous exceptions contained in sections 4 and 5, they are cases in which an order or rule is to be made upon the basis of the record in a statutory hearing.

Section 7 (a): The subsection is not intended to disturb presently existing statutory provisions which explicitly provide for certain types of hearing officers. Among such are (1) joint hearings before officers of the Federal agencies and persons designated by one or more States, (2) where officers of more than one agency sit, (3) quota allotment cases under the Agricultural Adjustment Act of 1938, (4) Marine Casualty Investigation Boards, (5) registers of the General Land Office, (6) special boards set up to review the rights of disconnected servicemen (38 U. S. C. 693h) and the rights of veterans to special unemployment compensation (38 U. S. C. 69h), and (7) boards of employees authorized under the Interstate Commerce Act (49 U. S. C. 17 (2)).

Subject to this qualification, section 7 (a) requires that there shall preside at the taking of evidence one or more examiners appointed as provided in this act, unless the agency itself or one or more of its members presides. This provision is one of the most important provisions in the act. In many agencies of the Government this provision may mean the appointment of a substantial number of hearing officers having no other duties. The resulting expense to the Government may be increased, particularly in agencies where hearings are now conducted by employees of a subordinate status or by employees having duties in addition to presiding at hearings. On the other hand, it is contemplated that the Civil Service Commission, which is empowered under the provisions of section 11 to prescribe salaries for hearing officers, will establish various salary

grades in accordance with the nature and importance of the duties performed, and will assign those in the lower grades to duties now performed by employees in the lower brackets. It may also be possible for the agencies to reorganize their staffs so as to permit the appointment of full-time hearing officers by reducing the number of employees engaged on other duties.

This subsection further provides for withdrawal or removal of examiners disqualified in a particular proceeding. Some of the agencies have voiced concern that this provision would permit undue delay in the conduct of their proceedings because of unnecessary hearings or other procedure to determine whether affidavits of bias are well founded. The provision does not require hearings in every instance but simply requires such procedure, formal or otherwise, as would be necessary to establish the merits of the allegations of bias. If it is manifest that the charge is groundless, there may be prompt disposition of the matter. On the other hand, if the affidavit appears to have substance, it should be inquired into. In any event, whatever procedure the agency deems appropriate must be made a part of the record in the proceeding in which the affidavit is filed.

Section 7 (b): The agency may delegate to a hearing officer any of the enumerated powers with which it is vested. The enumeration of the powers of hearing officers is not intended to be exclusive.

Section 7 (c): The first sentence states the customary rule that the proponent of a rule or order shall have the burden of proof. Statutory exceptions to the rule are preserved. Parties shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts. This is not intended to disturb the existing practice of submitting technical written reports, summaries, and analyses of material gathered in field surveys, and other devices appropriately adapted to the particular issues involved in specialized proceedings. Whether the agency must in such cases produce the maker of the report depends, as it does under the present law, on what is reasonable in all the circumstances.

It may be noted that agencies are empowered, in this subsection, to dispense with oral evidence only in the types of proceedings enumerated, that is, in instances in which normally it is not necessary to see and hear the witnesses in order properly to appraise the evidence. While there may be types of proceedings other than those enumerated in which the oral testimony of the witnesses is not essential, in such instances the parties generally consent to submission of the evidence in written form so that the inability of the agency to compel submission of written evidence would not be burdensome.

The provision regarding evidence in written form does not limit the generality of the prevailing principle that any evidence may be received, that is, that the rules of evidence as such are not applicable in administrative proceedings, and that all types of pertinent evidentiary material may be considered. It is assumed, of course, that agencies will, in the words of the Attorney General's committee on administrative procedure, rely only on such evidence (whether written or oral) as is relevant, reliable, and probative. This is meant as a guide, but the courts in reviewing an order are governed by the provisions of section 10 (e), which states the substantial evidence rule.

Section 7 (d): The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision, in the cases covered by section 7. This follows from the proposition that sections 7 and 8 deal only with cases where by statute the decision is to be based on the record of hearing. Further, section 7 is limited by the exceptions contained in the opening sen-

tences of sections 4 and 5; accordingly, certain special classes of cases, such as those where decisions rest solely on inspections, tests, or elections, are not covered. The second sentence of the subsection enables the agency to take official notice of material facts which do not appear in the record, provided the taking of such notice is stated in the record or decision, but in such cases any party affected shall on timely request be afforded an opportunity to show the contrary.

Section 8: This section applies to all hearings held under section 7.

Section 8 (a): Under this subsection either the agency or a subordinate hearing officer may make the initial decision. As previously observed with respect to subsection (c) of section 5, in cases to which that subsection is applicable the same officer who personally presided over the hearing shall make such decision if it is to be made by a subordinate hearing officer. The agency may provide that in all cases the agency itself is to make the initial decision, or after the hearing it may remove a particular case from a subordinate hearing officer and thereupon make the initial decision. The initial decision of the hearing officer, in the absence of appeal to or review by the agency, is (or becomes) the decision of the agency. Upon review the agency may restrict its decision to questions of law, or to the question of whether the findings are supported by substantial evidence or the weight of evidence, as the nature of the case may be. On the other hand, it may make entirely new findings either upon the record or upon new evidence which it takes. It may remand the matter to the hearing officer for any appropriate further proceedings.

The intention underlying the last sentence of this subsection is to require the adoption of a procedure which will give the parties an opportunity to make their contentions to the agency before the issuance of a final agency decision. This sentence states as a general requirement that, whenever the agency makes the initial decision without having presided at the reception of the evidence, a recommended decision shall be filed by the officer who presided at the hearing (or, in cases not subject to section 5 (c), by any other officer qualified to preside at section 7 hearings). However, this procedure need not be followed in rule making or in determining applications for initial licenses—(1) if, in lieu of a recommended decision by such hearing officer, the agency issues a tentative decision; (2) if, in lieu of a recommended decision by such hearing officer, a recommended decision is submitted by any of the agency's responsible officers; or (3) if, in any event, the agency makes a record finding that "due and timely execution of its function imperatively and unavoidably so requires."

Subsection (c) of section 5, as explained in the comments on that subsection, does not apply to rule making. The broad scope of rule making is explained in the notes to subsection (c) of section 2.

The second exception permits, in proceedings to make rules and to determine applications for initial licenses, the continuation of the widespread agency practice of serving upon the parties, as a substitute for either an examiner's report or a tentative agency report, a report prepared by the staff of specialists and technicians normally engaged in that portion of the agency's operations to which the proceeding in question relates. The third exception permits, in lieu of any sort of preliminary report, the agency to issue forthwith its final rule or its order granting or denying an initial license in the emergent instances indicated. The subsection, however, requires that an examiner issue either an initial or a recommended decision, as the case may be, in all cases subject to section 7 except rule making and determining applications for initial licenses. The act permits no deviation from this re-

quirement, unless, of course, the parties waive such procedure.

Section 8 (b): Prior to each recommended, initial, or tentative decision, parties shall have a timely opportunity to submit proposed findings and conclusions, and, prior to each decision upon agency review of either the decision of subordinate officers or of the agency's tentative decision, to submit exceptions to the initial, recommended, or tentative decision, as the case may be. Subject to the agency's rules, either the proposed findings or the exceptions may be oral in form where such mode of presentation is adequate.

Section 9: Subsection (a) is intended to declare the existing law. Subsection (b) is intended to codify the best existing law and practice. The second sentence of subsection (b) is not intended to apply to temporary licenses which may be issued pending the determination of applications for licenses.

Section 10: This section, in general, declares the existing law concerning judicial review. It provides for judicial review except insofar as statutes preclude it, or insofar as agency action is by law committed to agency discretion. A statute may in terms preclude judicial review or be interpreted as manifesting a congressional intention to preclude judicial review. Examples of such interpretation are: *Switchmen's Union of North America v. National Mediation Board* (320 U. S. 297); *American Federation of Labor v. National Labor Relations Board* (308 U. S. 401); *Butte, Anaconda & Pacific Railway Co. v. United States* (290 U. S. 127). Many matters are committed partly or wholly to agency discretion. Thus, the courts have held that the refusal by the National Labor Relations Board to issue a complaint is an exercise of discretion unreviewable by the courts. *Jacobsen v. National Labor Relations Board* (120 F. (2d) 96 (C. C. A. 3d); *Marine Engineers' Beneficial Assn. v. National Labor Relations Board*, decided April 8, 1943 (C. C. A. 2d), certiorari denied (320 U. S. 777). In this act, for example, the failure to grant a petition filed under section 4 (d) would be similarly unreviewable.

Section 10(a): Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review of such action. This reflects existing law. In *Alabama Power Co. v. Ickes* (302 U. S. 464), the Supreme Court stated the rule concerning persons entitled to judicial review. Other cases having an important bearing on this subject are *Massachusetts v. Mellon* (262 U. S. 447), *The Chicago Junction Case* (264 U. S. 258), *Sprunt & Son v. United States* (281 U. S. 249), and *Perkins v. Lukens Steel Co.* (310 U. S. 113). An important decision interpreting the meaning of the terms "aggrieved" and "adversely affected" is *Federal Communications Commission v. Sanders Bros. Radio Station* (309 U. S. 470).

Section 10(b): This subsection requires that, where a specific statutory method is provided for reviewing a given type of case in the courts, that procedure shall be used. If there is no such procedure, or if the procedure is inadequate (i. e., where under existing law a court would regard the special statutory procedure as inadequate and would grant another form of relief), then any applicable procedure, such as prohibitory or mandatory injunction, declaratory judgment, or habeas corpus, is available. The final sentence of the subsection indicates that the question of the validity of an agency action may arise in a court proceeding to enforce the agency action. The statutes presently provide various procedures for judicial enforcement of agency action, and nothing in this act is intended to disturb those procedures. In such a proceeding the defendant may contest the validity of the agency action unless a prior, adequate, and exclusive

opportunity to contest or review validity has been provided by law.

Section 10 (c): This subsection states (subject to the provisions of section 10 (a) the acts which are reviewable under section 10. It is intended to state existing law. The last sentence makes it clear that the doctrine of exhaustion of administrative remedies with respect to finality of agency action is intended to be applicable only (1) where expressly required by statute (as, for example, is provided in 49 U. S. C. 17 (9)) or (2) where the agency's rules require that decisions by subordinate officers must be appealed to superior agency authority before the decision may be regarded as final for purposes of judicial review.

Section 10 (d): The first sentence states existing law. The second sentence may be said to change existing law only to the extent that the language of the opinion in *Scripps-Howard Radio, Inc. v. Federal Communications Commission* (316 U. S. 4, 14), may be interpreted to deny to reviewing courts the power to permit an applicant for a renewal of a license to continue to operate as if the original license had not expired, pending conclusion of the judicial review proceedings. In any event, the court must find, of course, that granting of interim relief is necessary to prevent irreparable injury.

Section 10 (e): This declares the existing law concerning the scope of judicial review. The power of the court to direct or compel agency action unlawfully withheld or unreasonably delayed is not intended to confer any nonjudicial functions or to narrow the principle of continuous administrative control enunciated by the Supreme Court in *Federal Communications Commission v. Pottsville Broadcasting Co.* (309 U. S. 134). Clause (5) is intended to embody the law as declared, for example, in *Consolidated Edison Co. v. National Labor Relations Board* (305 U. S. 197). There the Chief Justice said "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion (p. 229) * * * assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force." (P. 230)

The last sentence of this section makes it clear that not every failure to observe the requirements of this statute or of the law is ipso facto fatal to the validity of an order. The statute adopts the rule now well established as a matter of common law in all jurisdictions that error is not fatal unless prejudicial.

SEC. 11. This section provides for the appointment, compensation, and tenure of examiners who will preside over hearings and render decisions pursuant to sections 7 and 8. The section provides that appointments shall be made "subject to the civil service and other laws to the extent not inconsistent with this act". Appointments are to be made by the respective employing agencies of personnel determined by the Civil Service Commission to be qualified and competent examiners. The examiners appointed are to serve only as examiners except that, in particular instances (especially where the volume of hearings under a given statute or in a given agency is not very great), examiners may be assigned additional duties which are not inconsistent with or which do not interfere with their duties as examiners. To insure equality of participation among examiners in the hearing and decision of cases, the agencies are required to use them in rotation so far as may be practicable.

Examiners are subject to removal only for good cause "established and determined" by the Commission. The Commission must afford the examiner a hearing, if requested, and must rest its decision solely upon the basis of the record of such hearing. It should be noted that the hearing and the decision are

to be conducted and made pursuant to the provisions of sections 7 and 8.

Section 11 provides further that the Commission shall prescribe the compensation of examiners, in accordance with the compensation schedules provided in the Classification Act, except that the efficiency rating system set forth in that act shall not be applicable to examiners.

Sec. 12. The first sentence of section 12 is intended simply to indicate that the act will be interpreted as supplementing constitutional and legal requirements imposed by existing law.

The section further provides that "no subsequent legislation shall be held to supersede or modify the provisions of this act except to the extent that such legislation shall do so expressly". It is recognized that no congressional legislation can bind subsequent sessions of the Congress. The present act can be repealed in whole or in part at any time after its passage. However, the act is intended to express general standards of wide applicability. It is believed that the courts should as a rule of construction interpret the act as applicable on a broad basis, unless some subsequent act clearly provides to the contrary.

Coal Miners Present Their Side

EXTENSION OF REMARKS OF

HON. MELVIN PRICE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Saturday, May 25, 1946

Mr. PRICE of Illinois. Mr. Speaker, under leave to extend my remarks in the RECORD, I herewith include a letter from the Progressive Mine Workers of America, Local Union No. 3, Collinsville, Ill., together with a resolution adopted by that organization at a recent meeting.

The resolution will give much food for thought to those who will take the time to read it:

PROGRESSIVE MINE WORKERS OF

AMERICA, LOCAL UNION NO. 3,

Collinsville, Ill., May 21, 1946.

MELVIN PRICE,

House of Representatives,

Washington, D. C.

DEAR SIR: We are enclosing herewith a copy of a resolution as adopted by our local union and sent to our State senators.

We note from your record that you are not only following a progressive attitude but taking an active part to stem inroads of reaction and also forwarding progressive measures.

Thanking you for your kind response to our mail, we remain,

Yours very truly,

FRANK HOFFMANN, Jr.,

Recording Secretary, Local Union No. 3, P. M. W. of A.

MINERS WILL FIGHT FOR CAUSE

Many lawmakers in Washington are breaking their necks trying to find ways and means and reasons to pass laws to check labor and their unions, or we might say to put labor in its place, and if it were not for the popular vote on election day, and of which labor holds a deciding influence in the number of votes cast, as well as the open vote on bills in Congress, labor would have been chained long ago.

These reactionary and progress suffocators should examine their own actions. Of the many must bills recommended by our former President, Franklin D. Roosevelt, and Presi-

dent Harry S. Truman, backed by labor, how many were passed? We can safely say none because the one or two that were passed were crippled so badly that they are maimed for life.

Some of these bills that were backed by labor and are gathering dust on the shelves of Congress, have much to do with health and welfare, the main cause of the miners strike. Labor has not forgotten their importance, and not being able to get them through legislation, which is the proper way, must resort to other methods.

There has been much talk about the coal miners strike and the retarding of industrial activities caused by the coal strike. To all of this the coal miners admit and also realize the importance of an uninterrupted supply of coal. But can any group of workers make their demands, which are necessary to a proper living, known effectively without draining the markets of their product when it becomes necessary to strike to gain their needs.

Every person, and also recently the coal barons, have come out with open statements admitting the necessity of a health and welfare fund for the miners, but it became necessary to bring about the present scarcity of coal so that the miners may at last be lifted from their plight.

This is no different than World War II. It became necessary to fight a World War II because the people did not have the forethought to kill fascism in time to avert a war. And also it seems necessary to let a number of people be killed in order to eliminate a dangerous railroad crossing.

We deplore strikes as much as any labor hater. A strike if you have been in one you should know, is not a picnic any more than World War II was an excursion.

Many unions in their contracts have established welfare funds such as medical care, hospitalization, unemployment benefits, old-age assistance, etc.

In order to be fair to the consumer, we hold that such welfare funds should be established by law. If handled by law it will cover all industries and also spread the cost to all industrial products.

Why should a consumer of a given product pay the cost of a fund to the people who make that product that he must buy while he himself does not receive such benefits because the industry in which he works may not carry such a fund.

While labor continuously rallies support for essential labor laws, we insist that such legislation be adequate for the purpose for which it is intended. And until such laws are passed, we shall continue to fight to have such benefits inserted in our contracts.

Resolution of Arlington (Mass.) Machine Workers

EXTENSION OF REMARKS OF

HON. EDITH NOURSE ROGERS

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Saturday, May 25, 1946

Mrs. ROGERS of Massachusetts. Mr. Speaker, under leave to extend my remarks in the RECORD, I include the following resolution:

ARLINGTON MACHINE WORKS,

Arlington, Mass., May 10, 1946.

HON. EDITH N. ROGERS,

House of Representatives,

Washington, D. C.

DEAR MADAM: We, the undersigned, employees of the Arlington Machine Works, of

Arlington, Mass., do hereby demand that immediate appropriate congressional action be taken which will stop John L. Lewis and provide for limiting his power.

As matters stand, we are faced with lay-off from work due to material shortage. This will cause our families to endure hardship which we will not accept without vigorous protest.

Very truly yours,

Employees of Arlington Machine Works, Arlington, Mass.: Alvar V. Melin, Joseph L. Lupien, George A. Lupien, Art Bell, E. Bowman, H. M. Macfarlane, Raymond H. Stearns, F. Snow, George E. Reid, William Bell, Sherman Forbes, Geo. H. Bell, Sherman Forbes, Geo. H. W. Karlson, John M. Stearnes.

Reorganization Plans 1, 2, and 3 Should Be Investigated

EXTENSION OF REMARKS OF

HON. WILLIAM A. PITTENGER

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Saturday, May 25, 1946

Mr. PITTENGER. Mr. Speaker, on May 22 I called to the attention of the House Reorganization Plans No. 1, No. 2, and No. 3 which were transmitted to the House by President Truman on May 16 and which are labeled as House Documents 594, 595, and 596, Seventy-ninth Congress, second session, and are now before Congress. These plans were submitted pursuant to Public Law No. 263, Seventy-ninth Congress, approved December 20, 1945.

It is important that Members of the House familiarize themselves with the details of this law. It provides that unless both branches of Congress take an affirmative action to disapprove any reorganization plan, then that plan goes into effect the same as though it were a law by Congress. The disapproval of Congress must be voted within 60 days after the reorganization plan is submitted to Congress.

There may or may not be a coincidence in the fact that party leaders have indicated that they expect a recess or adjournment of Congress around July 8, and in the fact that these reorganization plans were submitted May 16. If plans of party leaders are carried out Congress will not be in session when the 60 day time limit expires.

I introduced House Concurrent Resolution 151 on May 23 for the purpose of getting a vote on Reorganization Plan No. 2, which some think ought to be disapproved. In my remarks I indicated that that plan, along with other things, abolished the United States Employees Compensation Commission. I pointed out that no other Government agency was duplicating the work of the Commission, and that therefore no saving would result to the taxpayers because some other Government agency would have to employ additional help to carry out the purpose of that law. Anyhow, those of us who supported the law giving the President power to consolidate Government bureaus and agencies did so with

the understanding that he would abolish agencies which were duplicating the work of other Government departments.

I am today introducing two more House concurrent resolutions, one of them to prevent Reorganization Plan No. 1 from becoming effective and the other to prevent Reorganization Plan No. 3 from becoming effective. I am doing so because information comes to me that indicates some very startling plans on foot as a result of this reorganization legislation. If I am correctly advised, a lot of New Deal and wartime emergency agencies created by the late President are being perpetuated and continued in these reorganization plans. I only mention this fact because I have not had time to study these reorganization plans and if these charges are true, the appropriate committee of the House of Representatives should make a study of the reorganization plans and report the results obtained by it to this Congress. Otherwise, we will get legislation by Presidential message and we have had too much of that already.

Apparently under this legislation the President can submit as many reorganization plans as he sees fit. I am one Member of this House who would not trust the New Dealers or the "brain trusters" to prepare a reorganization plan. I would know in advance that they were concerned more with politics and perpetuating their own jobs than they were concerned with the welfare of the American people or the American taxpayer or anything else American. I earnestly hope that the Members of this House will get copies of these documents and cooperate with me in getting quick action and hearings before the proper committee. If the Bureau of the Budget has prepared these plans, we ought to have that agency before Congress immediately.

I supported legislation for reorganization and consolidation of these Government agencies because I felt that Congress could not or would not do the job by reason of certain outstanding difficulties. I felt we had to entrust the work to one man. I am still hopeful that the man to whom we gave that power will exercise that power wisely and to the best interest of the American people.

Prompt Action Will End Strikes Against the Government

EXTENSION OF REMARKS

OF

HON. J. LEROY JOHNSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, May 25, 1946

Mr. JOHNSON of California. Mr. Speaker, the ugly spectacle of defiance of the Government has raised its head in the railroad and the coal strikes. There is no right to strike against the Government. Continuing a strike that paralyzes the transportation, industrial, and agricultural life of the United States in such a strike.

Collective bargaining presupposes self-control and consideration of the consequences of continuing a strike because one party cannot get all that is demanded. Two out of twenty railroad unions decided that they would tie up the railroad system to get their demands. They were willing to punish 140,000,000 people and cause much suffering in order to compel acceptance of what they thought they should get. It is plain that this is the application of force to compel a surrender to demands at the expense of the public welfare. The Railway Mediation Act, which up to now has been successful in such situations, has failed and new legislation must be enacted.

In the case of the coal strike there is a law that applies. It is the Smith-Connally Act. If its provisions are followed by the Secretary of Interior there can be no strike after the Government takes over. Recently at some hearings on the proposed repeal of this act the Under Secretary of Labor recommended that the section providing for seizure of industries on strike be retained. He stated that this provision would be useful in the event of a strike against a public utility. Apparently the administration was thinking of situations such as are now upon us or they would not have recommended the retention of the seizure provisions of this law.

The Smith-Connally Act could also have been used in the case of the cannery labor dispute. But the President would not give the California Congressman an interview to discuss the matter, although importuned twice by Mr. LEA, the dean of our delegation, to do so.

Strikes of this type were tried in 1919 in Boston and Seattle. Calvin Coolidge and Ole Hansen met the challenge promptly and the strikes dissipated. This will occur today if prompt and vigorous action is taken.

Time for Restraint

EXTENSION OF REMARKS

OF

HON. JAMES G. FULTON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Saturday, May 25, 1946

Mr. FULTON. Mr. Speaker, under leave to extend my remarks in the RECORD, I include the following editorial from the Washington Post of today:

TIME FOR RESTRAINT

Washingtonians, like other Americans, are inclined to pride themselves on their ability to exercise self-restraint and preserve a calm demeanor in the face of national calamities. But, as wartime experience has demonstrated, many people who display magnificent courage and willingness to make great personal sacrifices in the fight against an alien enemy show an appalling lack of self-control in the day-to-day struggle to get more than a fair share of goods in short supply.

During the war rationing protected the public from the inroads of hoarders insofar as basic necessities were concerned. Since the war these marauders (some of whom have an almost pathological yearning to buy up

anything hard to get) have caused a certain amount of inconvenience. Fortunately, they have not been in a position to do much direct damage, although their temperamental susceptibility to rumors of shortages undoubtedly has encouraged the spread of black-market operations. Owing to the rail strike, however, the people of this and other cities are now wide open to attack from the host of guerrilla shoppers, mostly women, who maintain vigils in the stores, prepared to pounce on any article that takes their fancy, regardless of their need for it. We do not doubt that these selfish individuals, if left to their own devices, will make it extremely difficult, if not impossible, to effect an equitable apportionment of limited food supplies. What is worse, they are likely to spread panic among the decent people who want to share with others.

From all accounts, Washington is fortunate in having access to food supplies sufficient to provide for essential needs for some time. The thing we have chiefly to fear is that hoarders will nullify the efforts of the authorities to direct supplies where they are most needed, with the result that some people will have more than they need while others will get too little. The only way to prevent such maldistribution is to bring pressure to bear upon the undisciplined elements. The more thin-skinned among them may be induced to mend their ways by the force of good example or by a few well-directed open rebukes. A good deal more could be done, however, by informal rationing of scarce foods by store managers. If the strike should continue for any length of time, some program of voluntary rationing by sellers will probably become essential to prevent real hardship.

Attacks Against Representative Government

EXTENSION OF REMARKS

OF

HON. DANIEL A. REED

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Saturday, May 25, 1946

Mr. REED of New York. Mr. Speaker, like many other Members of Congress my opposition vote at election time has in more recent years come from a small group of voters who have been deceived and misled by a few radical Communists. It is not the home folks who furnish the subversive leadership and spread communistic propaganda throughout our districts, but rather the Russian-trained agents from Communist headquarters who invade our respective districts to spread their poison. These lawless enemies of God and freedom are trained in the technique of revolution. Chaos, confusion, distress, and hunger are the troubled waters in which the communistic crusaders fish for converts to their Communist godless cause. The Communists' political organizers and propagandists in our respective congressional districts carry on their subversive work under the semblance of patriotic organizations.

One of the most dramatic and far-reaching fights in the cause of religious freedom to be found in recorded history was the one carried on in the early days of our own country, yet there is no organized Christian and Jewish resist-

ance to the active enemies of God, Church, and our Republic. Thoughtful people, who believe in our form of government, ought to realize that the violent attacks against representative government now being carried on, do not originate in this country. The attacks stem from Moscow. The Soviet agents are now operating in our respective districts preparatory to their fight against us at election time. Their propaganda is subtle, adroit and when it is supplemented by the bureaucrats of our own Government, it is effective in influencing credulous citizens who are unaware that their Government is filled with Communists holding key positions.

Let us take an example in a foreign government which shows what happens to Christian and Jew alike when the Communists take over:

The inhabitants of the provinces of east Poland are a believing people. Christian or Jew they are men and women of faith. The numerous houses of worship were always crowded during hours of services. Christmas and Easter are days of immense significance in Polish life. They are not just holidays; they are holy days. For a nation that has in the course of its history lived through martyrdom, death, and resurrection, Easter has a poignancy, a promise, and a reality unknown to people who have never been nailed to the cross. National tragedy and the suffering this has implied have never destroyed Polish faith in God. Therefore Communist doctrine, Soviet doctrine in regard to religion and the negation of God not only win few followers among the Poles but are repellant to them. They want no authority over them that would eliminate religious faith and its practice. They are a people noted throughout their history for their tolerance. They have permitted persons of all faiths to live among them and practice those faiths. They demand religious liberty.

Liberty has been lost in the Polish eastern provinces under Soviet administration. Among Polish citizens deported to the Union of Soviet Socialist Republics all religious activities of every kind were forbidden and a close watch was kept in the effort to prevent them.

Yet there were many instances of outwitting the guards. In prisoner-of-war and labor camps there were a comparatively large number of priests in the garb of civilians or common soldiers, and these men whispered rather than said the mass at night in a corner of a barrack for a little handful of men while others stood guard, past whom none could get without having given the password—the old Christian password of the catacombs—Ichthus. If such services were discovered, those taking part spent days in the dark cell, while priests were removed and disappeared altogether.

Let every patriotic American, in these days when enemies from within and from without are seeking to weaken and destroy this Republic, give heed to the prophetic words of Daniel Webster:

Other misfortunes may be borne or their effects overcome. If disastrous wars should sweep our commerce from the ocean, another generation may renew it; if it exhaust our Treasury, future industry may replenish it; if it desolate and lay waste our fields, still, under a new cultivation, they will grow green again and ripen to future harvests.

It were but a trifle even if the walls of yonder Capitol were to crumble, if its lofty pillars should fall, and its gorgeous decorations be all covered by the dust of the valley. All these may be rebuilt.

But who shall reconstruct the fabric of demolished government?

Who shall rear again the well-proportioned columns of constitutional liberty?

Who shall frame together the skillful architecture which unites national sovereignty with States' rights, individual security, and public prosperity?

No, if these columns fall, they will be raised not again. Like the Coliseum and the Parthenon, they will be destined to a mournful and a melancholy immortality. Bitter tears, however, will flow over them than were ever shed over the monuments of a more glorious edifice than Greece or Rome ever saw, the edifice of constitutional American liberty.

Questions and Answers Re S. 7

EXTENSION OF REMARKS OF

HON. SAM HOBBS

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Saturday, May 25, 1946

Mr. HOBBS. Mr. Speaker, under leave to extend my remarks in the RECORD, I include the following memorandum of the Department of Justice:

QUESTIONS AND ANSWERS RE S. 7

Section 3 (a) provides that there shall be publication in the Federal Register of the rules of the various agencies of the Government. The last sentence of section 3 (a) states: "No person shall in any manner be required to resort to organization or procedure not so published." But this does not mean that a person who has actual notice is not required to resort to agency organization or procedure if it has not been published in the Federal Register. If a person has actual notice of a rule, he is bound by it. The only purpose of the requirement for publication in the Federal Register is to make sure that persons may find the necessary rules as to organization and procedure if they seek them. It goes without saying that actual notice is the best of all notices. At most, the Federal Register gives constructive notice. See 44 U. S. C. Sec. 307.

Section 3 (a) requires that rules to be published in the Federal Register shall be separately stated in three categories. This does not require every agency to comb through all its rules and separate procedural aspects from substantive aspects of all of its rules. This provision has application only in futuro. As to rules which have been heretofore published by the agency, there is no requirement that they separately state them into the three categories required by section 3 (a). Such as task would be well-nigh impossible since agencies have adopted rules for many years prior to this act and these rules in many cases have been codified into the Code of Federal Regulations. It is not intended that the Code of Federal Regulations be rewritten at this time.

Under section 6 (c) it is provided that "upon contest the court shall sustain any such subpoena or similar process or demand to the extent that is found it is in accordance with law." This provision is not intended to change the law as expounded in *Endicott Johnson v. Perkins* (317 U. S. 501 1943) in which the Supreme Court held that subpoenas issued by an agency will be accorded due respect by the Court if they are within the agency's power and that there would be no independent inquiry as to whether the particular person subpoenaed comes within the coverage of the act enforced by the agency. The law, as expounded in *Endicott Johnson v. Perkins* is still applicable. All that this section requires is that the court determine whether the subpoena

issued comes within the general power of that agency. There need be no in limine inquiries as to whether the person subpoenaed is or is not covered by the act.

Section 10 as to judicial review does not, in my view, make any real changes in existing law. This section in general declares the existing law concerning judicial review. It is an attempt to restate in exact statutory language the doctrine of judicial review as expounded in various statutes and as interpreted by the Supreme Court. I know that some agencies are quite concerned about the phraseology used in section 10 for fear that it will change the existing doctrine of judicial review which has been settled for the particular agency concerned. I feel sure that should this section be given the interpretation which is intended, namely, that it is merely a restatement of existing law, there should be no difficulty for any agency. We may in a sense look at section 10 as an attempt by Congress to place into statutory language existing methods of review.

Student Body of Williams College Commemorates Memorial Day

EXTENSION OF REMARKS OF

HON. JOHN W. HESELTON

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Saturday, May 25, 1946

Mr. HESELTON. Mr. Speaker, I received yesterday the following telegram:

WILLIAMSTOWN, MASS., May 23, 1946.

Hon. JOHN W. HESELTON,
House of Representatives,
Washington, D. C.:

Student body of Williams College intends to commemorate Memorial Day by reducing food consumption for all day's meals to 1,200 calories and content similar to average in starving nations overseas with savings contributed to world relief. We feel this small sacrifice is in the spirit of consecration in which this Memorial Day will be celebrated, and by emphasizing to each person the seriousness of food situation will discourage food wastage. We urge you to use your influence to secure cooperation of Nation to show rest of world that America is aware of the desperate conditions and is willing to take measures to aid starving peoples. Done on a Nation-wide basis, savings of both money and food would be material. Would appreciate reply regarding action you are taking. Similar messages are being forwarded to others of the Nation's leaders, State and Government officials, and to the Nation's colleges.

UNDERGRADUATE COUNCIL
OF WILLIAMS COLLEGE.

The telegram speaks for itself. The student body at Williams College has made a constructive suggestion to the Nation. These men, many of them veterans of this war, are determined to do everything possible to help this Nation meet its great and solemn obligation to the starving millions of human beings all over the world. They have proven the complete truth of President Truman's statement to the world that—

The warm heart of America will respond to the greatest threat of mass starvation in the history of the world.

It is a privilege to endorse this suggestion. As they have so well stated:

This small sacrifice is in the spirit of consecration in which this Memorial Day will be celebrated.

DIGEST OF
CONGRESSIONAL PROCEEDINGS
OF INTEREST TO THE DEPARTMENT OF AGRICULTURE

OFFICE OF BUDGET AND FINANCE
Legislative Reports and Service Section
(For Department staff only)

Issued May 28, 1946
For actions of May 27, 1946
79th-2nd, No. 100

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HIGHLIGHTS: Senate agreed to House amendments to administrative-law bill; ready for President. Sen. Hart inserted Conn. Food Administrator's letter to Grain Branch discussing grain shortage as it affects dairy herds and poultry. Sen. Wiley inserted letter from Grain Branch answering questions on wheat supplies and flour production. Sen. Overton announced that hearings on Columbia Valley Authority bill have been indefinitely postponed. Sen. Downey introduced measure to provide for study of Federal pay schedules. Rep. Holifield urged elimination of meat subsidies and controls. Rep. Ellsworth criticized Secretary Anderson's "lack of...initiative" in remedying Pacific Northwest feed shortage.

SENATE

1. **ADMINISTRATIVE LAW.** Concurred in the House amendments to S. 7, to improve the administration of justice by prescribing fair administrative procedure (pp. 5921-4). This bill will now be sent to the President.
2. **STOCKPILING.** Sens. Thomas of Utah, Johnson of Colo., Hill, O'Mahoney, Austin, Bridges, and Gurney were appointed conferees on S. 752, to authorize acquisition of stocks of strategic and critical materials for national defense (pp. 5938-9). House conferees have not yet been appointed.
3. **PERSONNEL CEILING.** Sen. Byrd, Va., inserted "an explanation of the personnel ceiling which was adopted by the conferees" on S. 1415, the Federal pay bill (p. 5932).
4. **SURPLUS PROPERTY.** Sen. Wiley, Wis., criticized War Assets Administration's handling of surplus property (pp. 5932-3).
5. **EMERGENCY LABOR BILL.** Debated H. R. 6578, the President's labor bill (pp. 5908-21, 5933-82).
6. **GRAIN SHORTAGE.** Sen. Hart, Conn., inserted a letter from the Conn. Food Administrator to Director Smith of the Grain Branch discussing the feed shortage as it affects dairy herds and poultry (pp. 5904-5).
Sen. Wiley, Wis., inserted a letter from Director Smith answering various questions regarding wheat supplies and flour production (pp. 5905-6).
7. **PRICE CONTROL.** Sen. Wiley inserted a statement from the Wis. Implement Dealers' Association criticizing price ceilings on farm machinery (p. 5905).

8. COLUMBIA VALLEY AUTHORITY. Sen. Overton, La., inserted correspondence between himself and Sen. Mitchell, Wash., regarding the holding of hearings on S. 1716, the Columbia Valley Authority bill, and announced that hearings on this bill have been indefinitely postponed (p. 5903).
9. FLOOD CONTROL. Received from the War Department a report on examination of Ouachita River, La., for flood control (S. Doc. 191)(p. 5902).

HOUSE

10. LIVESTOCK AND MEAT. Rep. Holifield, Calif., criticized OPA slaughtering regulations and urged the suspension of meat controls for a period of 4 to 6 months beginning July 1, and the elimination of subsidies on meat if production is not increased (pp. 5881-4).
11. FEED SHORTAGE. Rep. Ellsworth, Oreg., criticized the Secretary and other Government officials for "lack of judgment and lack of initiative to act" in remedying the Pacific Northwest food shortage (pp. 5892-5).
12. PERSONNEL; RETIREMENT. The Civil Service Committee reported without amendment S. 896, to extend to certain annuitants retired under the Civil Service Retirement Act prior to Jan. 24, 1942, the privilege of having their annuities recomputed under the method contained in the act of Jan. 24, 1942 (H.Rept. 2146) and H.R. 3492, to prohibit withholding or recovery of moneys on account of certification or payment by a former Federal employee unless there is shown to have been fraud on the part of the employee (H.Rept. 2147); and reported with amendment H.R. 4651, to provide annuities for a recovered disability annuitant who through no fault of his own fails to obtain reemployment (H.Rept. 2148)(p. 5899).
13. ST. LAWRENCE WATERWAY. Rep. Pittenger, Minn., urged Congressional action on legislation to authorize this project (pp. 5897-8).
14. PRICE CONTROL. Received New Haven (Conn.) Board of Aldermen and Council of Social Agencies resolutions urging the continuation of price control without crippling amendments (p. 5899).
15. SURPLUS PROPERTY. The Accounts Committee reported without amendment H.Res. 641, providing an additional \$45,000 for the Select Committee to study and investigate the operation of the program for the disposition of surplus property (H. Rept. 2145) (pp. 5875, 5899).

BILLS INTRODUCED

16. PERSONNEL; HOLIDAYS; SALARIES. H.R. 5584, by Rep. Green, Pa., to provide that every Saturday shall be a holiday in D.C. To District of Columbia Committee. (p. 5899)
S. J. Res. 164, by Sen. Downey, Calif., creating a joint congressional committee to conduct a study of Federal salary and wage schedules. To Civil Service Committee. (p. 5902.)

ITEMS IN APPENDIX

17. WHEAT; FOREIGN RELIEF. Extension of remarks of Rep. Pittenger, Minn., criticizing the shipping of wheat to Europe instead of flour as the cause of unemployment in the flour mills (p. A3188).
18. GRAIN EXPORTS. Rep. Fuller, N.Y., inserted a Syracuse (N.Y.) Herald-Journal ar-

Government of the United States if we were to attempt to pick up raw recruits to operate the enterprises which require skill and long experience in their operation for the safety and benefit of the people.

Mr. SMITH. I have been told that many of our men who have been in the services have become skilled in operating locomotives, and that they would be delighted to help in the present crisis. I think it is worth while to mobilize that volunteer force in the country at a time when people ought to be working together instead of being divided by various influences.

Mr. BARKLEY. If we are to say that the crisis is sufficiently acute that the President of the United States is authorized to take over the plant and operate it, it ought to be operated at once. We ought not to wait to mobilize workers scattered all over the country who may at one time or another in their lives have done similar work.

Mr. SMITH. I believe that the President would have thousands of volunteers tomorrow if he were to call upon them to operate the railroads.

Mr. BARKLEY. I do not know about that. We are having some difficulty in obtaining volunteers now. That is why we are considering a draft law.

Mr. HAWKES. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. HAWKES. I wish to support the majority leader in what he is saying. I feel very strongly that this is not a party question. It is a question of Americanism. I do not believe that there is a Member of the Senate who realizes more fully than I do that no law which we may enact will make millions of people work. There must be voluntary cooperation in the last analysis. But let me ask the majority leader this question: Which is the greater crime—to shut down an essential mine or transportation facility, or any other kind of facility which involves the lives of millions of people, many of whom may die because of the acts of a given group of men, whether they be employers or employees, or to shoot a man in the back? I say that this is a punitive measure. It must be a punitive measure. If we make this thing soft in my opinion the Government will not occupy the position it must occupy with its citizens in these very crucial times.

Mr. BARKLEY. If the Senator will permit me to comment, I agree that it is a potentially punitive measure.

Mr. HAWKES. It must be.

Mr. BARKLEY. But it becomes punitive only when those to whom it applies continue to defy the Government of the United States.

Mr. HAWKES. That is exactly the point.

Mr. BARKLEY. After the Government has done the thing which it regards as essential in the protection of the health, welfare, and lives of our people.

Mr. HAWKES. If, after the Congress and the President have taken action they continue to do things which are a crime against the people of the United States.

Mr. President, I should like to read something which I think is worth while,

if the Senator from Kentucky will yield to me.

Let us remember what Mr. Justice Oliver Wendell Holmes, in the Hitchman case, said:

I have no doubt that when the power of either capital or labor is exerted in such a way as to attack the life of the community, those who seek their private interests at such cost are public enemies and should be dealt with as such.

Let us remember what President Woodrow Wilson said with respect to the general railroad strike, September 23, 1916:

The business of government is to see that no other organization is as strong as itself. To see that no body or group of men, no matter what their private interest is, may come into competition with the authority of society.

Let us remember what the late Mr. Justice Louis Brandeis said before he became a member of the Supreme Court. No one would accuse him of being unfriendly to labor.

The plea of trade-unions for immunity, be it from injunction or liability from damages, is as fallacious as the plea of the lynchers. If lawless methods are pursued by trade unions—

And that is what we are talking about—

whether it be by violence, by intimidation, or by the more peaceful infringement on legal rights, that lawlessness must be put down at once and at any cost.

Mr. BARKLEY. I thank the Senator from New Jersey.

Section 10 is simply a limitation of the time during which the act shall be effective. It reads as follows:

SEC. 10. The provisions of this act shall cease to be effective 6 months after the cessation of hostilities, as proclaimed by the President, or upon the date (prior to the date of such proclamation) of the passage of a concurrent resolution of the two Houses of Congress stating that such provisions shall cease to be effective, or on June 30, 1947, whichever first occurs.

Under that language, the life of the act could not extend beyond June 30, 1947. That provision was placed in the bill because we do not wish anyone to gain the impression that we are enacting permanent legislation. It is temporary to deal with the emergency which has been created.

Section 11 is the separability provision. It reads as follows:

SEC. 11. If any provision of this act, or the application of such provision to any person or circumstance, is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

Mr. President, I apologize to the Senate for consuming so much time. I have been provoked—or encouraged, whichever word one chooses to use—by questions. I hope that I have given a reasonably fair interpretation of the provisions of the bill.

Mr. DOWNEY obtained the floor.

Mr. TUNNELL. Mr. President, will the Senator yield to me for the purpose of suggesting the absence of a quorum?

Mr. DOWNEY. I yield for that purpose.

Mr. TUNNELL. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. HUFMAN in the chair). The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Aiken	Hawkes	Pepper
Andrews	Hayden	Radcliffe
Austin	Hickenlooper	Reed
Ball	Hill	Revercomb
Barkley	Hoby	Robertson
Brewster	Huffman	Russell
Bridges	Johnson, Colo.	Saltonstall
Briggs	Johnston, S. C.	Shipstead
Brooks	Knowland	Smith
Bushfield	La Follette	Stanfill
Byrd	Langer	Stewart
Capehart	Lucas	Taft
Capper	McCarran	Taylor
Connally	McClellan	Thomas, Okla.
Cordon	McFarland	Thomas, Utah
Donnell	McMahon	Tobey
Downey	Magnuson	Tunnell
Eastland	Mead	Tydings
Ellender	Millikin	Vandenberg
Ferguson	Mitchell	Wagner
Fulbright	Moore	Walsh
George	Morse	Wheeler
Gerry	Murdock	Wherry
Green	Murray	White
Guffey	Myers	Wiley
Gurney	O'Daniel	Wilson
Hart	O'Mahoney	Young
Hatch	Overton	

The PRESIDING OFFICER. Eighty-three Senators having answered to their names, a quorum is present.

ADMINISTRATIVE PROCEDURE ACT

Mr. McCARRAN. Mr. President, will the Senator from California yield in order that the Chair may lay before the Senate a message from the House of Representatives with respect to Senate bill No. 7?

Mr. DOWNEY. Upon condition that I shall not lose the floor, I shall be very happy to yield.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 7) entitled "An act to improve the administration of justice by prescribing fair administrative procedure," which was to strike out all after the enacting clause and insert:

TITLE

SECTION 1. This act may be cited as the "Administrative Procedure Act."

DEFINITIONS

SEC. 2. As used in this act—

(a) Agency: "Agency" means each authority (whether or not within or subject to review by another agency) of the Government of the United States other than Congress, the courts, or the governments of the possessions, Territories, or the District of Columbia. Nothing in this act shall be construed to repeal delegations of authority as provided by law. Except as to the requirements of section 3, there shall be excluded from the operation of this act (1) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them, (2) courts martial and military commissions, (3) military or naval authority exercised in the field in time of war or in occupied territory, or (4) functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947, and the functions conferred by the following statutes: Selective Training and Service Act of 1940; Contract Settlement Act of 1944; Surplus Property Act of 1944.

(b) Person and party: "Person" includes individuals, partnerships, corporations, asso-

ciations, or public or private organizations of any character other than agencies. "Party" includes any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any agency proceeding; but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes.

(c) Rule and rule making: "Rule" means the whole or any part of any agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of any agency, and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing upon any of the foregoing. "Rule making" means agency process for the formulation, amendment, or repeal of a rule.

(d) Order and adjudication: "Order" means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of any agency in any matter other than rule making but including licensing. "Adjudication" means agency process for the formulation of an order.

(e) License and licensing: "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission. "Licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation amendment, modification, or conditioning of a license.

(f) Sanction and relief: "Sanction" includes the whole or part of any agency (1) prohibition, requirement, limitation, or other condition affecting the freedom of any person; (2) withholding of relief; (3) imposition of any form of penalty or fine; (4) destruction, taking, seizure, or withholding of property; (5) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees; (6) requirement, revocation, or suspension of a license; or (7) taking of other compulsory or restrictive action. "Relief" includes the whole or part of any agency (1) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy; (2) recognition of any claim, right, immunity, privilege, exemption, or exception; or (3) taking of any other action upon the application or petition of, and beneficial to, any person.

(g) Agency proceeding and action: "Agency proceeding" means any agency process as defined in subsections (c), (d), and (e) of this section. "Agency action" includes the whole or part of every agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.

PUBLIC INFORMATION

SEC. 3. Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of an agency—

(a) Rules: Every agency shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organization including delegations by the agency of final authority and the established places at which, and methods whereby, the public may secure information or make submissions or requests; (2) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations; and (3) substantive rules adopted

as authorized by law and statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public, but not rules addressed to and served upon named persons in accordance with law. No person shall in any manner be required to resort to organization or procedure not so published.

(b) Opinions and orders: Every agency shall publish or, in accordance with published rule, make available to public inspection all final opinions or orders in the adjudication of cases (except those required for good cause to be held confidential and not cited as precedents) and all rules.

(c) Public records: Save as otherwise required by statute, matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found.

RULE MAKING

SEC. 4. Except to the extent that there is involved (1) any military, naval, or foreign affairs function of the United States or (2) any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts—

(a) Notice: General notice of proposed rule making shall be published in the Federal Register (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law) and shall include (1) a statement of the time, place, and nature of public rule making proceedings; (2) reference to the authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved. Except where notice or hearing is required by statute, this subsection shall not apply to interpretative rules, general statements of policy, rules of agency organization, procedure, or practice, or in any situation in which the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(b) Procedures: After notice required by this section, the agency shall afford interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity to present the same orally in any manner; and, after consideration of all relevant matter presented, the agency shall incorporate in any rules adopted a concise general statement of their basis and purpose. Where rules are required by statute to be made on the record after opportunity for an agency hearing, the requirements of sections 7 and 8 shall apply in place of the provisions of this subsection.

(c) Effective dates: The required publication or service of any substantive rule (other than one granting or recognizing exemption or relieving restriction or interpretative rules and statements of policy) shall be made not less than 30 days prior to the effective date thereof except as otherwise provided by the agency upon good cause found and published with the rule.

(d) Petitions: Every agency shall accord any interested person the right to petition for the issuance, amendment, or repeal of a rule.

ADJUDICATION

SEC. 5. In every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved (1) any matter subject to a subsequent trial of the law and the facts de novo in any court; (2) the selection or tenure of an officer or employee of the United States other than examiners appointed pursuant to section 11; (3) proceedings in which decisions

rest solely on inspections, tests, or elections; (4) the conduct of military, naval, or foreign-affairs functions; (5) cases in which an agency is acting as an agent for a court; and (6) the certification of employee representatives—

(a) Notice: Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, and nature thereof; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) the matters of fact and law asserted. In instances in which private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the times and places for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(b) Procedure: The agency shall afford all interested parties opportunity for (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment where time, the nature of the proceeding, and the public interest permit, and (2) to the extent that the parties are unable so to determine any controversy by consent, hearing, and decision upon notice and in conformity with sections 7 and 8.

(c) Separation of functions: The same officers who preside at the reception of evidence pursuant to section 7 shall make the recommended decision or initial decision required by section 8 except where such officers become unavailable to the agency. Save to the extent required for the disposition of ex parte matters as authorized by law, no such officer shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate; nor shall such officer be responsible to or object to the supervision or direction of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency. No officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency in any case shall, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 8 except as witness or counsel in public proceedings. This subsection shall not apply in determining applications for initial licenses or to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; nor shall it be applicable in any manner to the agency or any member or members of the body comprising the agency.

(d) Declaratory orders: The agency is authorized in its sound discretion, with like effect as in the case of other orders, to issue a declaratory order to terminate a controversy or remove uncertainty.

ANCILLARY MATTERS

SEC. 6. Except as otherwise provided in this act—

(a) Appearance: Any person compelled to appear in person before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. Every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in any agency proceeding. So far as the orderly conduct of public business permits, any interested person may appear before any agency or its responsible officers or employees for the presentation, adjustment, or determination of any issue, request, or controversy in any proceeding (interlocutory, summary, or otherwise) or in connection with any agency function. Every agency shall proceed with reasonable dispatch to conclude any matter presented to it except that due regard shall be had for the convenience and necessity

of the parties or their representatives. Nothing herein shall be construed either to grant or to deny to any person who is not a lawyer the right to appear for or represent others before any agency or in any agency proceeding.

(b) Investigations: No process, requirement of a report, inspection, or other investigative act or demand shall be issued, made, or enforced in any manner or for any purpose except as authorized by law. Every person compelled to submit data or evidence shall be entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

(c) Subpenas: Agency subpenas authorized by law shall be issued to any party upon request and, as may be required by rules of procedure, upon a statement or showing of general relevance and reasonable scope of the evidence sought. Upon contest the court shall sustain any such subpoena or similar process or demand to the extent that it is found to be in accordance with law and, in any proceeding for enforcement, shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of contumacious failure to comply.

(d) Denials: Prompt notice shall be given of the denial in whole or in part of any written application, petition, or other request of any interested person made in connection with any agency proceeding. Except in affirming a prior denial or where the denial is self-explanatory, such notice shall be accompanied by a simple statement of procedural or other grounds.

HEARINGS

SEC. 7. In hearings which section 4 or 5 requires to be conducted pursuant to this section—

(a) Presiding officers: There shall preside at the taking of evidence (1) the agency, (2) one or more members of the body which comprises the agency, or (3) one or more examiners appointed as provided in this act; but nothing in this act shall be deemed to supersede the conduct of specified classes of proceedings in whole or part by or before boards or other officers specially provided for by or designated pursuant to statute. The functions of all presiding officers and of officers participating in decisions in conformity with section 8 shall be conducted in an impartial manner. Any such officer may at any time withdraw if he deems himself disqualified; and, upon the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification of any such officer, the agency shall determine the matter as a part of the record and decision in the case.

(b) Hearing powers: Officers presiding at hearings shall have authority, subject to the published rules of the agency and within its powers, to (1) administer oaths and affirmations, (2) issue subpenas authorized by law, (3) rule upon offers of proof and receive relevant evidence, (4) take or cause depositions to be taken whenever the ends of justice would be served thereby, (5) regulate the course of the hearing, (6) hold conferences for the settlement or simplification of the issues by consent of the parties, (7) dispose of procedural requests or similar matters, (8) make decisions or recommend decisions in conformity with section 8, and (9), take any other action authorized by agency rule consistent with this act.

(c) Evidence: Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence

and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses any agency may, where the interest of any party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(d) Record: The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision in accordance with section 8 and, upon payment of lawfully prescribed costs, shall be made available to the parties. Where any agency decision rests on official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the contrary.

DECISIONS

SEC. 8. In cases in which a hearing is required to be conducted in conformity with section 7—

(a) Action by subordinates: In cases in which the agency has not presided at the reception of the evidence, the officer who presided (or, in cases not subject to subsection (c) of section 5, any other officer or officers qualified to preside at hearings pursuant to section 7) shall initially decide the case or the agency shall require (in specific cases or by general rule) the entire record to be certified to it for initial decision. Whenever such officers make the initial decision and in the absence of either an appeal to the agency or review upon motion of the agency within time provided by rule, such decision shall without further proceedings then become the decision of the agency. On appeal from or review of the initial decisions of such officers the agency shall, except as it may limit the issues upon notice or by rule, have all the powers which it would have in making the initial decision. Whenever the agency makes the initial decision without having presided at the reception of the evidence, such officers shall first recommend a decision except that in rule making or determining applications for initial licenses (1) in lieu thereof the agency may issue a tentative decision or any of its responsible officers may recommend a decision or (2) any such procedure may be omitted in any case in which the agency finds upon the record that due and timely execution of its function imperatively and unavoidably so requires.

(b) Submittals and decisions: Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings or conclusions. The record shall show the ruling upon each such finding, conclusion, or exception presented. All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof.

SANCTIONS AND POWERS

SEC. 9. In the exercise of any power or authority—

(a) In general: No sanction shall be imposed or substantive rule or order be issued except within jurisdiction delegated to the agency and as authorized by law.

(b) Licenses: In any case in which application is made for a license required by law the agency, with due regard to the rights or privileges of all the interested parties or adversely affected persons and with reasonable dispatch, shall set and complete any proceedings required to be conducted pursuant to sections 7 and 8 of this act or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, no withdrawal, suspension, revocation, or annulment of any license shall be lawful unless, prior to the institution of agency proceedings therefor, facts or conduct which may warrant such action shall have been called to the attention of the licensee by the agency in writing and the licensee shall have been accorded opportunity to demonstrate or achieve compliance with all lawful requirements. In any case in which the licensee has, in accordance with agency rules made timely and sufficient application for a renewal or a new license, no license with reference to any activity of a continuing nature shall expire until such application shall have been finally determined by the agency.

JUDICIAL REVIEW

SEC. 10. Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—

(a) Right of review: Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

(b) Form and venue of action: The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. Agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.

(c) Reviewable acts: Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final shall be final for the purposes of this subsection whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule and provides that the action meanwhile shall be inoperative) for an appeal to superior agency authority.

(d) Interim relief: Pending judicial review any agency is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, every reviewing court (including every court to which a case may be taken on appeal from or upon application for certiorari or other writ to a reviewing court) is authorized to issue all necessary and appropriate process to postpone the effective date of any agency

action or to preserve status or rights pending conclusion of the review proceedings.

(e) Scope of review: So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

EXAMINERS

SEC. 11. Subject to the civil-service and other laws to the extent not inconsistent with this act, there shall be appointed by and for each agency as many qualified and competent examiners as may be necessary for proceedings pursuant to sections 7 and 8, who shall be assigned to cases in rotation so far as practicable and shall perform no duties inconsistent with their duties and responsibilities as examiners. Examiners shall be removable by the agency in which they are employed only for good cause established and determined by the Civil Service Commission (hereinafter called the Commission) after opportunity for hearing and upon the record thereof. Examiners shall receive compensation prescribed by the Commission independently of agency recommendations or ratings and in accordance with the Classification Act of 1923, as amended, except that the provisions of paragraphs (2) and (3) of subsection (b) of section 7 of said act, as amended, and the provisions of section 9 of said act, as amended, shall not be applicable. Agencies occasionally or temporarily insufficiently staffed may utilize examiners selected by the Commission from and with the consent of other agencies. For the purposes of this section, the Commission is authorized to make investigations, require reports by agencies, issue reports, including an annual report to the Congress, promulgate rules, appoint such advisory committees as may be deemed necessary, recommend legislation, subpoena witnesses or records, and pay witness fees as established for the United States courts.

CONSTRUCTION AND EFFECT

SEC. 12. Nothing in this Act shall be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. If any provision of this act or the application thereof is held invalid, the remainder of this act or other applications of such provision shall not be affected. Every agency is granted all authority necessary to comply with the requirements of this act through the issuance of rules or otherwise. No subsequent legislation shall be held to supersede or modify the provisions of this act except to the extent that such legislation shall do so expressly. This act shall take effect 3 months after its approval except that sections 7 and 8 shall take effect 6 months after such

approval, the requirements of the selection of examiners pursuant to section 11 shall not become effective until 1 year after such approval, and no procedural requirement shall be mandatory as to any agency proceeding initiated prior to the effective date of such requirement.

Mr. McCARRAN. Mr. President, some weeks ago the Senate passed Senate bill No. 7, which is known as the administrative procedure bill.

The Senator from Maine will recall that the bill passed the Senate, after a careful discussion, without a dissenting vote. Let me say that the bill has been under study and consideration for nearly 10 years. For about 2 years, while the present chairman of the Judiciary Committee and other members of that committee have had the matter in hand, a very careful and meticulous study has been made of the whole subject. The House did not in any substantial particular amend the Senate bill. The only thing which the House did was to clarify the bill in respect to a few of its provisions. I can best illustrate that by a brief statement from the Attorney General as to what the House did. Without quoting him at length, the Attorney General said that he approved the amendments which had been made by the House which were merely explanatory in nature.

For that reason, Mr. President, I move that the Senate concur in the House amendment.

Mr. WHITE. Mr. President, will the Senator yield for an inquiry?

Mr. McCARRAN. I yield.

Mr. WHITE. Were the House amendments submitted to the Judiciary Committee for its consideration, or only to individual members of the committee?

Mr. McCARRAN. Only to individual members, because we were unable to get a meeting of a quorum of the committee.

Mr. WHITE. Was there a unanimity of approval on the part of the committee members, so far as the Senator knows?

Mr. McCARRAN. So far as I personally know, yes.

Mr. REVERCOMB. Mr. President, will the Senator yield?

Mr. McCARRAN. I yield.

Mr. REVERCOMB. As a member of the subcommittee which dealt with the bill, I should be very happy if the Senator from Nevada, who is chairman of the Judiciary Committee, and who has so ably steered the legislation thus far, would tell us briefly what are the amendments.

Mr. McCARRAN. Does the Senator refer to the House amendments?

Mr. REVERCOMB. Yes.

Mr. McCARRAN. I shall have to ask the Senator from California [Mr. Downey] to be patient with me while I go over the amendments. They are set forth in the report of the Committee on the Judiciary of the House of Representatives.

With reference to section 1, it is provided that the measure may be cited as the "Administrative Procedure Act."

In section 2, with reference to definitions, the report states, the definitions apply to the remainder of the bill.

With reference to section 2 (a), under the title "Agency," it is said, "The word 'agency' is defined by excluding legislative, judicial, and territorial authorities" and by including any other "authority" whether or not within or subject to review by another agency. The word "other" was inserted by the House of Representatives.

In connection with section 2 (b), the word "person" and the word "party" are dealt with in the report as follows: "Person" is defined to include specific forms of organizations other than agencies. "Party" is defined to include anyone named, or admitted, or seeking, and entitled to be admitted, as a party in any agency proceeding, and so forth.

With reference to section 2 (c) the report states:

"Rule" is defined as any agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law, policy, organization, procedure, or practice requirements and includes any prescription for the future of rates, wages, financial structure, and so forth. "Rule making" means agency process for the formation, amendment, or repeal of the rule."

Does the Senator wish me to go through each amendment?

Mr. REVERCOMB. Am I to understand that all the changes which have been made were changes merely in language and do not materially affect the intent of the act?

Mr. McCARRAN. I assure the Senator that his statement is correct.

Mr. REVERCOMB. Then I shall not ask for a further explanation.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Nevada.

The motion was agreed to.

RECONSIDERATION OF CONFIRMATION OF NOMINATION OF RICHARD B. MCENTIRE, OF KANSAS, TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION

Mr. WAGNER. Mr. President, will the Senator yield?

Mr. DOWNEY. I am glad to yield if I do not lose the floor.

Mr. WAGNER. Mr. President, as in executive session I ask unanimous consent to enter a motion to reconsider the vote by which the Senate, on last Saturday, confirmed the nomination of Richard B. McEntire, of Kansas, to be a member of the Securities and Exchange Commission.

The PRESIDING OFFICER. Is there objection?

The Chair hears none.

Mr. AIKEN. Mr. President, may I make a statement without the Senator from California losing the floor?

Last Thursday I asked the majority leader if he would agree to allow consideration of the confirmation of the appointment of Admiral Smith to be a member of the Maritime Commission to go over until today, because I wanted to say something with regard to the nomination. I did not wish consideration of the nomination to be postponed for the purpose of opposing the nomination of Admiral Smith. I understood the majority leader to say that consideration

[PUBLIC LAW 404—79TH CONGRESS]

[CHAPTER 324—2D SESSION]

[S. 7]

AN ACT

To improve the administration of justice by prescribing fair administrative procedure.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE

SECTION 1. This Act may be cited as the "Administrative Procedure Act".

DEFINITIONS

SEC. 2. As used in this Act—

(a) AGENCY.—"Agency" means each authority (whether or not within or subject to review by another agency) of the Government of the United States other than Congress, the courts, or the governments of the possessions, Territories, or the District of Columbia. Nothing in this Act shall be construed to repeal delegations of authority as provided by law. Except as to the requirements of section 3, there shall be excluded from the operation of this Act (1) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them, (2) courts martial and military commissions, (3) military or naval authority exercised in the field in time of war or in occupied territory, or (4) functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947, and the functions conferred by the following statutes: Selective Training and Service Act of 1940; Contract Settlement Act of 1944; Surplus Property Act of 1944.

(b) PERSON AND PARTY.—"Person" includes individuals, partnerships, corporations, associations, or public or private organizations of any character other than agencies. "Party" includes any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any agency proceeding; but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes.

(c) RULE AND RULE MAKING.—"Rule" means the whole or any part of any agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of any agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing upon any of the foregoing. "Rule making" means agency process for the formulation, amendment, or repeal of a rule.

(d) **ORDER AND ADJUDICATION.**—"Order" means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of any agency in any matter other than rule making but including licensing. "Adjudication" means agency process for the formulation of an order.

(e) **LICENSE AND LICENSING.**—"License" includes the whole or part of any agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission. "Licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation amendment, modification, or conditioning of a license.

(f) **SANCTION AND RELIEF.**—"Sanction" includes the whole or part of any agency (1) prohibition, requirement, limitation, or other condition affecting the freedom of any person; (2) withholding of relief; (3) imposition of any form of penalty or fine; (4) destruction, taking, seizure, or withholding of property; (5) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees; (6) requirement, revocation, or suspension of a license; or (7) taking of other compulsory or restrictive action. "Relief" includes the whole or part of any agency (1) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy; (2) recognition of any claim, right, immunity, privilege, exemption, or exception; or (3) taking of any other action upon the application or petition of, and beneficial to, any person.

(g) **AGENCY PROCEEDING AND ACTION.**—"Agency proceeding" means any agency process as defined in subsections (c), (d), and (e) of this section. "Agency action" includes the whole or part of every agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.

PUBLIC INFORMATION

SEC. 3. Except to the extent that there is involved (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating solely to the internal management of an agency—

(a) **RULES.**—Every agency shall separately state and currently publish in the Federal Register (1) descriptions of its central and field organization including delegations by the agency of final authority and the established places at which, and methods whereby, the public may secure information or make submittals or requests; (2) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal or informal procedures available as well as forms and instructions as to the scope and contents of all papers, reports, or examinations; and (3) substantive rules adopted as authorized by law and statements of general policy or interpretations formulated and adopted by the agency for the guidance of the public, but not rules addressed to and served upon named persons in accordance with law. No person shall in any manner be required to resort to organization or procedure not so published.

(b) **OPINIONS AND ORDERS.**—Every agency shall publish or, in accordance with published rule, make available to public inspection all final opinions or orders in the adjudication of cases (except those required for good cause to be held confidential and not cited as precedents) and all rules.

(c) PUBLIC RECORDS.—Save as otherwise required by statute, matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found.

RULE MAKING

SEC. 4. Except to the extent that there is involved (1) any military, naval, or foreign affairs function of the United States, or (2) any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts—

(a) NOTICE.—General notice of proposed rule making shall be published in the Federal Register (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law) and shall include (1) a statement of the time, place, and nature of public rule making proceedings; (2) reference to the authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved. Except where notice or hearing is required by statute, this subsection shall not apply to interpretative rules, general statements of policy, rules of agency organization, procedure, or practice, or in any situation in which the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(b) PROCEDURES.—After notice required by this section, the agency shall afford interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity to present the same orally in any manner; and, after consideration of all relevant matter presented, the agency shall incorporate in any rules adopted a concise general statement of their basis and purpose. Where rules are required by statute to be made on the record after opportunity for an agency hearing, the requirements of sections 7 and 8 shall apply in place of the provisions of this subsection.

(c) EFFECTIVE DATES.—The required publication or service of any substantive rule (other than one granting or recognizing exemption or relieving restriction or interpretative rules and statements of policy) shall be made not less than thirty days prior to the effective date thereof except as otherwise provided by the agency upon good cause found and published with the rule.

(d) PETITIONS.—Every agency shall accord any interested person the right to petition for the issuance, amendment, or repeal of a rule.

ADJUDICATION

SEC. 5. In every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved (1) any matter subject to a subsequent trial of the law and the facts de novo in any court; (2) the selection or tenure of an officer or employee of the United States other than examiners appointed pursuant to section 11; (3) proceedings in which decisions rest solely on inspections, tests, or elections; (4) the

conduct of military, naval, or foreign affairs functions; (5) cases in which an agency is acting as an agent for a court; and (6) the certification of employee representatives—

(a) NOTICE.—Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, and nature thereof; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) the matters of fact and law asserted. In instances in which private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the times and places for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(b) PROCEDURE.—The agency shall afford all interested parties opportunity for (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment where time, the nature of the proceeding, and the public interest permit, and (2) to the extent that the parties are unable so to determine any controversy by consent, hearing, and decision upon notice and in conformity with sections 7 and 8.

(c) SEPARATION OF FUNCTIONS.—The same officers who preside at the reception of evidence pursuant to section 7 shall make the recommended decision or initial decision required by section 8 except where such officers become unavailable to the agency. Save to the extent required for the disposition of ex parte matters as authorized by law, no such officer shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate; nor shall such officer be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency. No officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency in any case shall, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 8 except as witness or counsel in public proceedings. This subsection shall not apply in determining applications for initial licenses or to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; nor shall it be applicable in any manner to the agency or any member or members of the body comprising the agency.

(d) DECLARATORY ORDERS.—The agency is authorized in its sound discretion, with like effect as in the case of other orders, to issue a declaratory order to terminate a controversy or remove uncertainty.

ANCILLARY MATTERS

SEC. 6. Except as otherwise provided in this Act—

(a) APPEARANCE.—Any person compelled to appear in person before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. Every party shall be accorded the right to appear in person or by or with counsel or other duly qualified representative in any agency proceeding. So far as the orderly conduct of public business permits, any interested person may appear before any agency or its responsible

officers or employees for the presentation, adjustment, or determination of any issue, request, or controversy in any proceeding (interlocutory, summary, or otherwise) or in connection with any agency function. Every agency shall proceed with reasonable dispatch to conclude any matter presented to it except that due regard shall be had for the convenience and necessity of the parties or their representatives. Nothing herein shall be construed either to grant or to deny to any person who is not a lawyer the right to appear for or represent others before any agency or in any agency proceeding.

(b) INVESTIGATIONS.—No process, requirement of a report, inspection, or other investigative act or demand shall be issued, made, or enforced in any manner or for any purpose except as authorized by law. Every person compelled to submit data or evidence shall be entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

(c) SUBPENAS.—Agency subpoenas authorized by law shall be issued to any party upon request and, as may be required by rules of procedure, upon a statement or showing of general relevance and reasonable scope of the evidence sought. Upon contest the court shall sustain any such subpoena or similar process or demand to the extent that it is found to be in accordance with law and, in any proceeding for enforcement, shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of contumacious failure to comply.

(d) DENIALS.—Prompt notice shall be given of the denial in whole or in part of any written application, petition, or other request of any interested person made in connection with any agency proceeding. Except in affirming a prior denial or where the denial is self-explanatory, such notice shall be accompanied by a simple statement of procedural or other grounds.

HEARINGS

SEC. 7. In hearings which section 4 or 5 requires to be conducted pursuant to this section—

(a) PRESIDING OFFICERS.—There shall preside at the taking of evidence (1) the agency, (2) one or more members of the body which comprises the agency, or (3) one or more examiners appointed as provided in this Act; but nothing in this Act shall be deemed to supersede the conduct of specified classes of proceedings in whole or part by or before boards or other officers specially provided for by or designated pursuant to statute. The functions of all presiding officers and of officers participating in decisions in conformity with section 8 shall be conducted in an impartial manner. Any such officer may at any time withdraw if he deems himself disqualified; and, upon the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification of any such officer, the agency shall determine the matter as a part of the record and decision in the case.

(b) HEARING POWERS.—Officers presiding at hearings shall have authority, subject to the published rules of the agency and within its powers, to (1) administer oaths and affirmations, (2) issue subpoenas

authorized by law, (3) rule upon offers of proof and receive relevant evidence, (4) take or cause depositions to be taken whenever the ends of justice would be served thereby, (5) regulate the course of the hearing, (6) hold conferences for the settlement or simplification of the issues by consent of the parties, (7) dispose of procedural requests or similar matters, (8) make decisions or recommend decisions in conformity with section 8, and (9) take any other action authorized by agency rule consistent with this Act.

(c) EVIDENCE.—Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses any agency may, where the interest of any party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(d) RECORD.—The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision in accordance with section 8 and, upon payment of lawfully prescribed costs, shall be made available to the parties. Where any agency decision rests on official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the contrary.

DECISIONS

SEC. 8. In cases in which a hearing is required to be conducted in conformity with section 7—

(a) ACTION BY SUBORDINATES.—In cases in which the agency has not presided at the reception of the evidence, the officer who presided (or, in cases not subject to subsection (c) of section 5, any other officer or officers qualified to preside at hearings pursuant to section 7) shall initially decide the case or the agency shall require (in specific cases or by general rule) the entire record to be certified to it for initial decision. Whenever such officers make the initial decision and in the absence of either an appeal to the agency or review upon motion of the agency within time provided by rule, such decision shall without further proceedings then become the decision of the agency. On appeal from or review of the initial decisions of such officers the agency shall, except as it may limit the issues upon notice or by rule, have all the powers which it would have in making the initial decision. Whenever the agency makes the initial decision without having presided at the reception of the evidence, such officers shall first recommend a decision except that in rule making or determining applications for initial licenses (1) in lieu thereof the agency may issue a tentative decision or any of its responsible officers may recommend a decision

or (2) any such procedure may be omitted in any case in which the agency finds upon the record that due and timely execution of its functions imperatively and unavoidably so requires.

(b) **SUBMITTALS AND DECISIONS.**—Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting reasons for such exceptions or proposed findings or conclusions. The record shall show the ruling upon each such finding, conclusion, or exception presented. All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof.

SANCTIONS AND POWERS

SEC. 9. In the exercise of any power or authority—

(a) **IN GENERAL.**—No sanction shall be imposed or substantive rule or order be issued except within jurisdiction delegated to the agency and as authorized by law.

(b) **LICENSES.**—In any case in which application is made for a license required by law the agency, with due regard to the rights or privileges of all the interested parties or adversely affected persons and with reasonable dispatch, shall set and complete any proceedings required to be conducted pursuant to sections 7 and 8 of this Act or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, no withdrawal, suspension, revocation, or annulment of any license shall be lawful unless, prior to the institution of agency proceedings therefor, facts or conduct which may warrant such action shall have been called to the attention of the licensee by the agency in writing and the licensee shall have been accorded opportunity to demonstrate or achieve compliance with all lawful requirements. In any case in which the licensee has, in accordance with agency rules, made timely and sufficient application for a renewal or a new license, no license with reference to any activity of a continuing nature shall expire until such application shall have been finally determined by the agency.

JUDICIAL REVIEW

SEC. 10. Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—

(a) **RIGHT OF REVIEW.**—Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.

(b) **FORM AND VENUE OF ACTION.**—The form of proceeding for judicial review shall be any special statutory review proceeding relevant to the subject matter in any court specified by statute or, in the

absence or inadequacy thereof, any applicable form of legal action (including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus) in any court of competent jurisdiction. Agency action shall be subject to judicial review in civil or criminal proceedings for judicial enforcement except to the extent that prior, adequate, and exclusive opportunity for such review is provided by law.

(c) **REVIEWABLE ACTS.**—Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final shall be final for the purposes of this subsection whether or not there has been presented or determined any application for a declaratory order, for any form of reconsideration, or (unless the agency otherwise requires by rule and provides that the action meanwhile shall be inoperative) for an appeal to superior agency authority.

(d) **INTERIM RELIEF.**—Pending judicial review any agency is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, every reviewing court (including every court to which a case may be taken on appeal from or upon application for certiorari or other writ to a reviewing court) is authorized to issue all necessary and appropriate process to postpone the effective date of any agency action or to preserve status or rights pending conclusion of the review proceedings.

(e) **SCOPE OF REVIEW.**—So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error.

EXAMINERS

SEC. 11. Subject to the civil-service and other laws to the extent not inconsistent with this Act, there shall be appointed by and for each agency as many qualified and competent examiners as may be necessary for proceedings pursuant to sections 7 and 8, who shall be

assigned to cases in rotation so far as practicable and shall perform no duties inconsistent with their duties and responsibilities as examiners. Examiners shall be removable by the agency in which they are employed only for good cause established and determined by the Civil Service Commission (hereinafter called the Commission) after opportunity for hearing and upon the record thereof. Examiners shall receive compensation prescribed by the Commission independently of agency recommendations or ratings and in accordance with the Classification Act of 1923, as amended, except that the provisions of paragraphs (2) and (3) of subsection (b) of section 7 of said Act, as amended, and the provisions of section 9 of said Act, as amended, shall not be applicable. Agencies occasionally or temporarily insufficiently staffed may utilize examiners selected by the Commission from and with the consent of other agencies. For the purposes of this section, the Commission is authorized to make investigations, require reports by agencies, issue reports, including an annual report to the Congress, promulgate rules, appoint such advisory committees as may be deemed necessary, recommend legislation, subpoena witnesses or records, and pay witness fees as established for the United States courts.

CONSTRUCTION AND EFFECT

SEC. 12. Nothing in this Act shall be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. If any provision of this Act or the application thereof is held invalid, the remainder of this Act or other applications of such provision shall not be affected. Every agency is granted all authority necessary to comply with the requirements of this Act through the issuance of rules or otherwise. No subsequent legislation shall be held to supersede or modify the provisions of this Act except to the extent that such legislation shall do so expressly. This Act shall take effect three months after its approval except that sections 7 and 8 shall take effect six months after such approval, the requirement of the selection of examiners pursuant to section 11 shall not become effective until one year after such approval, and no procedural requirement shall be mandatory as to any agency proceeding initiated prior to the effective date of such requirement.

Approved June 11, 1946.

